SUPREME COURT, U.S.

JUN 2 1957

JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM—1956

No. ~~1118~~ 218

MASSEY-HARRIS-FERGUSON LIMITED,

Petitioner,

against

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI.

MOTION FOR LEAVE TO FILE A PETITION FOR MANDAMUS OR OTHER APPROPRIATE WRIT.

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MASSEY-HARRIS-FERGUSON LIMITED,

Petitioner,

v.

HON. MARION SPEED BOYD, UNITED STATES JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI.

Petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Sixth Circuit entered on April 12, 1957, or in the alternative that this Court grant Petitioner's motion for leave to file a petition for a writ of mandamus or other appropriate writ directed to the Honorable Marion Speed Boyd, United States District Judge for the Western District of Tennessee.

The judgment below denied a petition for a writ of mandamus or prohibition or other appropriate writ. By denying the petition, the Court of Appeals refused to review the District Court's order sustaining its jurisdiction against Petitioner's motion to quash service, although the Court of Appeals expressly found that the lower court's ruling was doubtful in fact and in law.

Petitioner, a Canadian corporation, based its motion in the District Court to quash service upon the fact that it is not found and transacts no business in the United States within the meaning of Section 12 of the Clayton Act, 38 Stat. 736 (1914), 15 U. S. C. §22 (1952).

By denying the petition for an extraordinary writ, the Court of Appeals requires the Petitioner to defend itself in a complex private antitrust litigation which will involve extensive discovery and other judicial proceedings extending over a long period of time. The District Court is thereby permitted to assert its jurisdiction over a defendant which has never been within the territorial jurisdiction of the United States. Compliance with the orders of the District Court will expose the Petitioner to penal sanctions under the laws of Ontario. Both the language of the statutes involved, and the history of their interpretation by this Court and lower courts establish that such an assertion of jurisdiction was contrary to the intent of Congress.

Unless the judgment of the Court of Appeals is reversed or this Court now issues its own extraordinary writ, Petitioner will be unable to challenge the District Court's ruling until after trial and final judgment. At that time, the harm to Petitioner will no longer be curable. Only by granting its writ of certiorari or extraordinary writ at the present stage of the proceedings can this Court consider the important question of federal procedure raised by the ruling of the Court of Appeals.

Moreover, unless reviewed and reversed promptly, the decision below inevitably will cause serious harm to international commercial relations generally and to the domestic and foreign commerce of the United States.

Opinions Below.

The opinion of the Court of Appeals is reported at 242 F. 2d 800 and is printed in the appendix at page 2a. The opinion of the District Court is unreported and is printed in the appendix at page 9a.

Jurisdiction.

The order of the Court of Appeals was entered on April 12, 1957. The jurisdiction of this Court to issue a writ of certiorari to the Court of Appeals is invoked under 28 U. S. C. §1254(1).

The jurisdiction of this Court to issue a writ of mandamus or prohibition or other appropriate writ to the District Court is invoked under 28 U. S. C. §1651(a).

Questions Presented.

This case presents important questions relating to the antitrust laws, to the jurisdiction of our District Courts in proceedings under such laws, and to the proper use of the extraordinary writs of mandamus and prohibition by the United States Courts of Appeals. The questions are:

1. (a) Where a Canadian corporation transacts no business in the United States, can it be served under Section 12 of the Clayton Act, 38 Stat. 736 (1914), 15 U. S. C. §22 (1952), merely because it has a wholly owned subsidiary which is found and transacts business in the United States? (b) Does service under these circumstances meet the requirements of due process?

2. Where the District Court's erroneous assertion of jurisdiction over a Canadian corporation is contrary to a

jurisdictional statute enacted by Congress and to controlling decisions of this Court and compels the Canadian defendant to defend itself in complicated, lengthy and expensive antitrust litigation and to expose itself to penal sanctions under Canadian law, should not the Court of Appeals issue a writ of mandamus or prohibition?

3. Where the jurisdiction of a District Court is challenged in an antitrust case in which the clearly erroneous assertion of jurisdiction will cause irreparable harm to the defendant, the facts being undisputed and the issues of great public importance, should the Court of Appeals refuse to issue a writ of mandamus merely because the jurisdictional question is difficult as a matter of law?

Statutes Involved.

The statutes involved are Section 12 of the Clayton Act, 38 Stat. 736 (1914), 15 U. S. C. §22 (1952) and the "All Writs Act," 28 U. S. C. §1651(a). These statutes are printed in full at page 1a of the appendix.

Statement.

This is a private action in the United States District Court for the Western District of Tennessee seeking relief for alleged violation of the federal antitrust laws.

Defendant Massey-Harris-Ferguson, Inc. (herein the "American Company") is a Maryland corporation organized in 1928. It has since then been a wholly owned subsidiary of Petitioner engaged in manufacturing and selling farm tractors and implements.

Defendant Massey-Harris-Ferguson Limited (herein the "Canadian Company") is a Canadian corporation with its

principal office and records in Toronto, Ontario, Canada. It was the moving defendant before the District Court and the Petitioner before the Court of Appeals and is the Petitioner before this Court.

The American Company for many years has been and is qualified to do business in all 48 states, and, of course, conceded the jurisdiction of the District Court as to it. It manufactures farm machinery at five different plants in the United States, and also purchases equipment from independent suppliers and manufacturers and from its parent corporation. The American Company's own national distribution organization consisted of 19 branches with approximately 2,250 franchised dealers for distribution of certain products and a number of independent distributors with approximately 1,870 franchised dealers for distribution of other of its products.

The business of the Canadian Company, which is a leading manufacturer and seller of farm machinery and implements in Canada and in certain other parts of the world outside of the United States, has been carried on for over 100 years. The Canadian Company has never manufactured products or solicited business in the United States and it has never intended to or actually conducted or transacted business in the United States. Any product of the Canadian Company is available for purchase in the United States only from the American Company, which buys such products from the Canadian Company in Canada and distributes them through its own franchised American channels.

The Canadian Company has never in over 100 years of operation been held by any court or any government or agency thereof of any state or of the United States to be transacting business in the United States in any way whatsoever.

Plaintiffs have been distributors in the Tennessee-Oklahoma area for products sold to them by the American Company. They have never had any direct contractual or other business relations with the Canadian Company.

Commencement of the Action and Service of Process.

This action was commenced in the District Court in 1956. Service of process was made upon the two following people: (a) In Memphis, Tennessee, on V. N. Detling, Assistant Branch Manager of the Memphis Branch of the American Company; (b) In Detroit, Michigan, upon Herman Klem, an engineer who was an officer and director of both the American Company and the Canadian Company.*

Canadian Company's Motion to Vacate Service.

Shortly thereafter, the Canadian Company appeared specially and moved to quash and vacate the purported service made upon it upon the grounds that it neither was "found" nor "transacted business" in the Western District of Tennessee within the meaning of Section 12 of the Clayton Act (38 Stat. 736 (1914), 15 U. S. C. §22 (1952)) and upon the ground that it was not "found" in Detroit. This motion was based upon the following admitted facts:

(a) The Canadian Company was never and is not now a resident of the Western District of Tennessee;

(b) The Canadian Company was not and is not now qualified to do business in the State of Tennessee;

(c) The Canadian Company has never maintained any office or place of business or kept any books or records in the Western District of Tennessee;

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* Attempted service on the Canadian Company by service on a third person in New York City was ruled below to have been ineffective, without opposition from plaintiffs.

(d) The Canadian Company has never held meetings of its board of directors or stockholders in the Western District of Tennessee and none of its officers or directors are residents there;

(e) The Canadian Company has never maintained any bank accounts in the Western District of Tennessee;

(f) The Canadian Company has never authorized or paid for any listing in any directories published in the Western District of Tennessee;

(g) The Canadian Company has never done any advertising in any media published in the Western District of Tennessee;

(h) The Canadian Company has never solicited any orders or made any sales in the Western District of Tennessee nor has it made any collections of any accounts there;

(i) The Canadian Company has never appointed anyone as its agent in the Western District of Tennessee for any purpose whatsoever;

(j) All purchases of merchandise from the Canadian Company by its American subsidiary were and are handled as follows: orders for merchandise are placed by the American Company with the Canadian Company and are shipped f.o.b. the Canadian Company's manufacturing plants in Canada upon instructions issued to it by the American Company in the United States.

Opinion of the District Court on the Motion to Quash Service.

The plaintiffs were permitted by the District Court to take extensive depositions of a number of officers and employees of the American Company on the jurisdictional question. They were also permitted to obtain discovery

under Rule 34 of numerous documents of that company relevant on the jurisdictional question. The depositions and documents thus adduced were in the record before the District Court on the motion to quash service. All these documents and depositions were in the record before the Court of Appeals.

At the conclusion of the argument on the motion, the District Court held that the American Company was merely an adjunct or instrumentality of the Canadian Company and that for all intents and purposes there was really only one corporation. Service in any one of the forty-eight states where the American subsidiary did business was therefore sufficient to obtain jurisdiction over the Canadian parent. The District Court did not discuss and rejected without substantial consideration the facts that the corporate form of the American Company has been strictly maintained and that the American Company always has been and is a distinct economic entity which carries on extensive business activities separate from those of its parent.

In reaching its conclusion, the District Court relied on the facts that some farm equipment had been shipped into Tennessee from the Canadian Company to the American Company, that there are some interlocking officers and directors between the American Company and the Canadian Company, that annual statements of the Canadian Company occasionally referred to the American Company as a "division" or "branch", and that in several instances engineers were sent from Canada to Tennessee for seasonal testing of equipment being developed and to conduct experimental farm work and were advanced expense money by the American Company.

The Petitioner conceded all of these facts, which establish no more than that the ordinary parent-subsidiary relationship existed between the Canadian Company and the

American Company. The record before the District Court disclosed no other facts which provided any greater or additional support for the Court's conclusion. The legal question was therefore sharply defined.

Relying on these facts alone, the District Court concluded that "the whole structure of the Canadian Company is in the Court's opinion, that of a very large enterprise with full control of its many operations, including the Memphis office in this judicial district," and that "the American Company operates wholly under the control and dominion of the Canadian Company." From this the Court concluded that the activities of the subsidiary within its jurisdiction were those of the parent and were sufficient to support service.

Opinion of the Court of Appeals.

The Canadian Company petitioned the United States Court of Appeals for the Sixth Circuit for a writ of mandamus or prohibition or other appropriate writ to review the ruling of the lower court. Petitioner contended that the jurisdictional ruling of the District Court was clearly erroneous, that it encroached upon the sovereignty of Canada and would expose Petitioner or its officers to penalties under the laws of Ontario, that the ordinary appellate remedy after final judgment would not be adequate since the Petitioner would suffer irreparable injury from the action in the District Court if it was required to proceed with the defense of the case, and that mandamus or prohibition is an appropriate remedy where a District Court erroneously asserts jurisdiction over a Canadian corporation clearly not subject to its jurisdiction.

The Court of Appeals in denying the writ held that the jurisdictional question "is a difficult one, and the ruling doubtful, both as a matter of fact and in point of law."

The only reasons stated for denying the petition were the difficulty of the jurisdictional question and the possibility that the District Court might again take up the question and that additional facts might be brought out in the course of the proceeding. The Court stated that the District Court's ruling should therefore not be reviewed until after final judgment.

REASONS FOR GRANTING THE WRIT.

I.

The Ruling of the District Court that the Canadian Company is Subject to Service Because of the Activities of its American Subsidiary is Clearly Contrary to Decisions of This Court and to the Requirements of Due Process and is of Great Public Importance by Reason of its Impact on International Commercial Relations.

In essence the holding in the District Court was that service on a subsidiary corporation is sufficient to gain jurisdiction over a parent when the parent controls and participates in policy decisions of the subsidiary.

The effect of the decision is to subject every alien corporation which has an American subsidiary to service in suits in our courts under the antitrust laws, with the corollaries of lengthy depositions of principal executives and almost unlimited discovery as to their business and internal affairs.

The Conflict With Decisions of This Court.

The law has heretofore been clear that jurisdiction over a corporation cannot be obtained merely by serving a wholly owned subsidiary unless the existence of the subsidiary is

"pure fiction" tantamount to fraud or unless the arrangement violates public policy.

The leading case for the foregoing proposition, *Cannon Manufacturing Co.* v. *Cudahy Co.*, 267 U. S. 333, has never been altered by this Court but rather continually and consistently reaffirmed by it, and followed by the lower courts. E.g., *Harris* v. *Deere and Company*, 223 F. 2d 161 (4th Cir. 1955); *Gravely Motor Plow Co.* v. *H. V. Carter Co.*, 193 F. 2d 158 (9th Cir. 1951).

In the *Cudahy* case the parent's domination of its subsidiary was far more complete than the alleged domination of the American Company by its parent in the instant case.*

This Court found (267 U. S. at 333) that the subsidiary was handled in substantially the same way as "those sell-

* In *Cudahy* the parent, Cudahy Packing Company, owned all of the outstanding stock of its subsidiary, Cudahy of Alabama; the president and vice-president of both corporations were the same; the books and accounts of the subsidiary were kept at the offices of the parent in Chicago; the employees of the parent who rendered services for the subsidiary at the Chicago office were paid by the parent and a regular charge was made on the subsidiary for these services; all correspondence from any branch office of the subsidiary went directly to the general offices in Chicago addressed merely to "Cudahy"; all correspondence was opened in a general mail department and distributed to employees who worked on the business of Cudahy of Alabama; a substantial part of the food products sold by the subsidiary was procured from the parent; all money on which the subsidiary operated was advanced or loaned by the parent; the books of the subsidiary were audited by auditors employed by the parent; the price of goods sold by the subsidiary was set by the parent; money collected by the subsidiary from sales was deposited in local banks and much of it was drawn immediately by the parent; the subsidiary had no control of funds once they were deposited and was unable to draw checks on deposits; all money for salaries and expenses was obtained by drafts drawn on the parent; every business decision of the subsidiary came from some individual who was also an officer of the parent; the same two men were assistant treasurers of both corporations and the general counsel of Cudahy was one of the directors of the subsidiary; exhaustive reports constituting a complete resume of the financial results of the branch were submitted periodically to the parent; and the subsidiary had no surplus and paid no dividends and was at all times indebted to the parent.

ing branches or departments of its business not separately incorporated", which marketed products in other states.

The court also said (*ibid.*) that the corporate separation was adopted "solely to secure to defendant some advantage under local law." It commented as follows:

> "The defendant wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself did not choose to enter the State in its corporate capacity. * * * It preferred to employ a subsidiary corporation. Congress has not provided that a corporation of one State shall be amenable to suit in the federal court for another State in which the plaintiff resides, whenever it employs a subsidiary corporation as the instrumentality for doing business therein. Compare *Lumiere* v. *Mac Edna Wilder, Inc.*, 261 U. S. 174, 177-8. That such use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction was settled by *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406, 409-11; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364; and *People's Tobacco Co., Ltd.* v. *American Tobacco Co.*, 246 U. S. 79, 87. In the case at bar, the identity of interest may have been more complete and the exercise of control over the subsidiary more intimate than in the three cases cited, but that fact has, in the absence of an applicable statute, no legal significance. *The corporate separation, though perhaps merely formal, was real: It was not pure fiction.* There is here no attempt to hold the defendant liable for an act or omission of its subsidiary or to enforce as against the latter a liability of the defendant. Hence, cases concerning substantive rights, like *Hart Steel Company* v. *Railroad Supply Co.*, 244 U. S. 294; *Chicago, etc. Ry. Co.* v. *Minneapolis Civic Association*, 247 U. S. 490; *Gulf Oil Corp.* v. *Lewellyn*, 248 U. S. 71; and *United States* v. *Lehigh Valley R.R. Co.*, 254 U. S. 255, have no application." (pp. 336-337). (Emphasis added)

See also *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364; *Harris* v. *Deere and Company*, 223 F. 2d 161 (4th Cir. 1955); *Fergus Motors, Inc.* v. *Standard-Triumph Motor Co.*, 130 F. Supp. 780 (S. D. N. Y. 1955).

The decision of the District Court in the instant case is directly contrary to the decision of this Court in the *Cudahy* case. Its refusal to follow that case is clearly and flagrantly wrong and its action was therefore, necessarily a usurpation of jurisdiction.

The District Court's Attempt to Distinguish the *Cudahy* Case.

The only basis upon which the District Court attempted to distinguish the *Cudahy* case was that it was a contract action and not an antitrust case. Thus the District Court has ruled that the activities of a subsidiary will support service on the parent in an antitrust case although they will not support such service in other kinds of cases.

This ruling is directly contrary to District Court decisions in other circuits. *Terra Carpenter Ltd.* v. *Ideal Cement Co.*, 117 F. Supp. 441 (D. Neb. 1954); *Lawlor* v. *National Screen Service Corp.*, 10 F. R. D. 123 (E. D. Pa. 1950). Both of these cases applied the rule of the *Cudahy* case to actions brought under Section 12 of the Clayton Act.

More important is the fact that the District Court's ruling is in square conflict with all relevant decisions of this Court. Section 12 of the Clayton Act, 15 U. S. C. §22, embodies a more stringent requirement for service in antitrust cases than is required by due process. Section 12 provides that service may be made on a corporation only in the state of incorporation or in a district in which the corporation is "found".

It is important to note that the requirement of being "found" in the jurisdiction demands a greater showing of

corporate activity than does the "transacts business" requirement which must be met in order to support *venue* under Section 12 of the Clayton Act. *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U. S. 359.

It is equally clear that "found" demands more corporate activity than the "doing business" standard ordinarily applied in determining the amenability of a foreign corporation to service of process. This Court has never held that the word "found" in the Clayton Act has undergone the broadening and liberalization which this Court effected in the "doing business" requirement by its decision in *International Shoe Co.* v. *Washington*, 326 U. S. 310. The definitions of "found" in *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U. S. 79, and the *Eastman* case stand in sharp contrast to the standard applied in *International Shoe*.

It does not follow from the relaxation of the due process requirement in *International Shoe* that the requirement for service under §12 of the Clayton Act has also been relaxed. The meaning of "found" in Section 12 is purely a matter of statutory interpretation; the question is how far did Congress mean to go, not how far could it constitutionally go. It is significant that although Congress deliberately eased the venue requirement in antitrust cases by its addition of the words "transacts business" when it enacted Section 12, it has never sought to alter the service requirement. It has apparently been satisfied with this Court's interpretation of the word "found" in the *People's Tobacco* and *Eastman* cases.

In *United States* v. *Scophony Co.*, 333 U. S. 795, where this Court was dealing with Section 12 of the Clayton Act, the opinion specifically stated:

> "We deal here with a problem of statutory construction, not one of constitutional import. Nor do we have any question of the exercise of Congress'

power to its farthest limit. The issue is simply how far Congress meant to go'' (p. 804).

In a footnote, the Court specifically rejected the standard applied in the *International Shoe* case, pointing out:

> ''* * * we are not concerned here with finding the utmost reach of Congress' power'' (p. 804).

It is thus clear that the requirement imposed for service in antitrust cases by §12 of the Clayton Act is stricter than the ''doing business'' requirement generally applied in determining the amenability of a corporation to service. This points up sharply the District Court's error in ruling that a more lenient requirement should be used in antitrust cases than is applied in contract or other actions.

The District Court's Interpretation of the Standard for Service under the Clayton Act.

Even under the relaxed interpretation of ''doing business'' in the *International Shoe* case the activities of a subsidiary will not alone support service on its parent. That the subsidiary is wholly owned, dominated and controlled by the parent is immaterial. Since the decision in that case, the lower courts have consistently applied the rule of the *Cudahy* case in determining whether a foreign corporation has subjected itself to suit.*

* *E.g., Harris* v. *Deere and Company*, 223 F. 2d 161 (4th Cir. 1955); *Gravely Motor Plow & Cultivator Co.* v. *H. V. Carter Co.*, 193 F. 2d 158 (9th Cir. 1951); *Echeverry* v. *Kellogg Switchboard & Supply Co.*, 175 F. 2d 900 (2nd Cir. 1949); *Anderson* v. *British Overseas Airways Corp.*, 144 F. Supp. 543 (S. D. N. Y. 1956); *Shedd* v. *Willys Motors, Inc.*, 143 F. Supp. 391 (S. D. N. Y. 1956); *Fergus Motors* v. *Standard-Triumph Motor Co.*, 130 F. Supp. 780 (S. D. N. Y. 1955); *Bergholt* v. *Hudson Motor Car Co.*, 124 F. Supp. 716 (D. Minn. 1954); *Dam* v. *General Electric Co.*, 111 F. Supp. 342 (E. D. Wash. 1953); *Stetson China Co.* v. *D. C. Andrews & Co.*, 9 F. R. D. 135 (N. D. Ill. 1948). In the *Harris, Anderson, Dam* and *Stetson* cases, the courts specifically discussed *International Shoe* and decided that it did not abrogate the rule of the *Cudahy* case.

In *Le Vecke* v. *Griesedieck Western Brewery Co.*, 233 F. 2d 772, 776 (9th Cir. 1956) the Court said:

> "Notwithstanding the reexamination of the requisites of due process in this area of the law which the Supreme Court of the United States has undertaken in such cases as International Shoe Co. *v.* State of Washington, . . . the leading case of Cannon Manufacturing Co. *v.* Cudahy Packing Co. . . . has not been overruled and, more significantly, has recently been cited and followed."

Unless all of these cases are to be overruled, the decision of the District Court in the instant case creates a more lenient standard for service under the Clayton Act than is embodied in the requirements of due process. Such an interpretation of the Clayton Act is inconsistent with this Court's language in the *Scophony* case and with its interpretations of Section 12 ever since the decision in the *People's Tobacco* case.

The District Court's Reliance on the *Scophony* Case.

The only decision of this Court relied on by the District Court in determining that the rule of the *Cudahy* case does not apply in antitrust proceedings was *United States* v. *Scophony Co.*, 333 U. S. 795. It is clear from a reading of the *Scophony* opinion and examination of the facts in that case that the decision does not support this proposition.

The holding that service was valid in the *Scophony* case was expressly rested on the independent activities of the parent, not on the activities of the subsidiary. There was no determination or suggestion that jurisdiction over the parent was found as a result of the activities of the sub-

sidiary. Indeed, the government disclaimed any such argument and contended that the English company was present through its own individual representatives since an impasse had arisen in the affairs of the subsidiary which required the parent to act in the jurisdiction through its own individual agents.

The basis of the decision in the *Scophony* case was that the only business which the English company was carrying on any place in the world was patent licensing and negotiations relating thereto. Since these activities were being carried on by the English company through its individual agents in New York it was subject to service even though it did not manufacture or sell products in New York. This Court held that the British parent was actively engaged in the United States at the time of service in carrying on "largely if not exclusively the only business" it had (333 U. S. at 810), and the officer of the British parent who was served within the district was for all relevant purposes at that time the British company (333 U. S. at 816). He was in New York as a director and with practically an unlimited power of attorney-in-fact. He testified that this gave him "full power to do anything that I might decide in connection with the affairs of Scophony, Ltd., as applicable" to the American situation (Record, p. 223). He would not deny that he controlled the British company (Record, p. 49).

The *Scophony* decision expressly stated that the situation presented was completely different and distinct and was not "governed * * * by reference to the very different businesses and activities of manufacturing and selling" (333 U. S. at 817) such as are here present. This Court said:

> "In sum, we have no such situation as was presented in the manufacturing and selling cases on

> which appellee relies [*e.g.*, the *Cudahy* case]. They concerned entirely different facts and enterprises'' (p. 816).

This Court also expressly stated that

> ''* * * those decisions [*e.g.*, *Cudahy*, *Peterson*] may be left untouched for the facts and situations in which they have arisen and to which they have been applied'' (p. 817).

Certiorari Should Be Granted to Review This Question.

Certiorari should be granted in this case in order to reverse the District Court's plainly erroneous application of the *Scophony* case. If the decision is permitted to stand there will inevitably result serious harm to international commercial relations generally and to the domestic and foreign commerce of the United States. As this court has pointed out,

> ''* * * in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its laws to an American transaction.'' *Lauritzen* v. *Larsen*, 345 U. S. 571, 582.

The investment of American companies in subsidiaries abroad is enormous. A determination that the American parents are subject generally to service of process in each country where their subsidiaries operate would create havoc in the American financial and business community.

II.

In View of the Clear Error of the District Court, the Public Importance of the Question Decided, and the Serious Prejudice to the Petitioner, the Court of Appeals Should Have Granted the Petition for Mandamus. Its Failure to Do So Compounds the Error of the District Court and Intensifies Its Importance and Effect.

The Court of Appeals concluded that the decision of the District Court was doubtful in law and fact, but nevertheless held that use of the extraordinary writ was inappropriate.

The suggestion that there was a factual doubt in the case is plainly in error. The facts upon which the District Court relied in asserting jurisdiction were conceded by the Petitioner. Thus the question presented to the Court of Appeals was the legal question whether on the conceded facts the District Court was justified in asserting jurisdiction.

As Petitioner has already demonstrated, the Court of Appeals was also in error when it concluded that the ruling of the District Court was merely doubtful in point of law. On the contrary, examination of the decisions of this Court indicates that the District Court was plainly wrong. The effect of the denial of mandamus by the Court of Appeals is to say to alien parents of American subsidiaries that even though they are improperly summoned before federal District Courts they must appear and defend themselves in lengthy and expensive proceedings and risk possible sanctions under their own domestic laws. To tell them that at the conclusion of the entire case they can argue on appeal that jurisdiction is clearly lacking would be to deny them any effective relief.

The Appropriateness of the Extraordinary Writ to Review an Erroneous Assertion of Jurisdiction.

The All Writs Act, 28 U. S. C. §1651 (1952), empowers the United States Supreme Court and Courts of Appeals to issue:

> "* * * all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

In its recent consideration of the meaning and scope of this statute, *LaBuy* v. *Howes Leather Company, Inc.*, 352 U. S. 249, this Court viewed very favorably the use of such writs for the "supervisory control of the District Courts by the Courts of Appeals [which] is necessary to proper judicial administration in the federal system." 352 U. S. at 259-60. The Court specified at least three instances when the extraordinary writ should be used:

> (1) Where there is clear abuse of discretion;
>
> (2) Where there is usurpation of judicial power either by exceeding the limits of jurisdiction or refusing to exercise jurisdiction (On this point the dissenters agreed, see *infra*);
>
> (3) Where appellate review will be defeated.

The second of these instances was stated in *Roche* v. *Evaporated Milk Association*, 319 U. S. 21, 26, to be one in which issuance of the writ was especially appropriate. Later decisions have on several occasions repeated or paraphrased this statement. *E. g.*, *United States Alkali Export Association* v. *United States*, 325 U. S. 196, 202; *Bankers Life & Casualty Co.* v. *Holland*, 346 U. S. 379, 383.

This Court has consistently held that one of the situations in which mandamus is particularly appropriate is

where the lower court has acted beyond its jurisdiction, as it has in the instant case. *United States Alkali Export Ass'n Inc. v. United States*, 325 U. S. 196; *De Beers Consolidated Mines, Ltd. v. United States*, 325 U. S. 212; *In the Matter of N. L. R. B.*, 304 U. S. 486. In cases in which the writ has been denied, the Court has often taken pains to point out that the lower court's jurisdiction of the persons of the defendants and the subject matter of the actions was not questioned. *Bankers Life & Casualty Co. v. Holland*, 346 U. S. 379, 382 (1953); *Roche v. Evaporated Milk Ass'n, supra*, 319 U. S. at 30.

It is to be noted that the dissenting Justices in *LaBuy v. Howes Leather Company, Inc., supra*, were in full accord with the majority that mandamus properly lies where the District Court " 'has exceeded . . . its jurisdiction' " (352 U. S. at 260).

The Court of Appeals for the Seventh Circuit has indicated that mandamus is an appropriate remedy to review the denial of a motion to quash service under Section 12 of the Clayton Act. *Comfort Equipment Co. v. Steckler*, 212 F. 2d 371, 377 (7th Cir. 1954); *Chicago, R. I. & P. R. Co. v. Igoe*, 212 F. 2d 378, 380 (7th Cir. 1954). This Court has recently approved the mandamus practice of the Seventh Circuit. *LaBuy v. Howes Leather Company, Inc., supra*, 352 U. S. at 257.

The Effect of the Ontario "Business Records Protection Act".

There are present in this case additional and unusual factors which Petitioner earnestly suggests make the grant of the extraordinary writ particularly important.

The decision making Petitioner a party to the case subjects it to the Federal Rules of Civil Procedure, which

have already been extensively invoked by plaintiffs. The record below will show that plaintiffs are seeking the discovery and the production by the Canadian Company from Ontario of all documents relating to every phase of its business from 1952 to date. Any attempt at compliance with any part of plaintiffs' demand for the discovery of documents will expose the Canadian Company or its directors or officers to penal proceedings in Ontario.

"The Business Records Protection Act" of the Province of Ontario [Revised Statutes of Ontario, 1950, c. 44] was enacted in 1947 and provides with exceptions not here relevant that:

> "1. No person shall pursuant to or under or in a manner which would be consistent with compliance with any requirement, order, direction or subpoena of any legislative, administrative or judicial authority in any jurisdiction outside of Ontario, take or cause to be taken, send or cause to be sent or remove or cause to be removed from a point within Ontario to a point outside of Ontario, any account, balance sheet, profit and loss statement or inventory or any resume or digest thereof or any other record, statement, report or material in any way relating to any business carried on in Ontario * * *."

Section 2 provides for enforcement of the act by the "attorney general or any person having an interest in the business." Penalties up to one year's imprisonment may be imposed.

At the time of the introduction of this statute in the Ontario Legislature on October 27, 1947, the then Premier of Ontario stated that the proposed statute was a result of a subpoena *duces tecum* issued by the United States District Court for the Southern District of New York in an

antitrust proceeding against two Canadian corporations.* The decision to which the Premier referred was *In re Grand Jury Subpoenas Duces Tecum*, 72 F. Supp. 1013 (S. D. N. Y. 1947). The court there found on the basis of contacts much more substantial than those involved in the present case that both Canadian companies were subject to its jurisdiction. One maintained New York offices, had qualified to do business in New York and had designated the Secretary of State as its agent for service of process. The other corporation maintained officers and offices in New York City, where extensive business on its behalf was conducted.

In the course of his statement to the Ontario Legislature, the Premier expressed very strongly his objection to the invasion of the "territorial integrity of Canada" by the courts of this country. He pointed out that the bill he was introducing would make it a legal offense to comply with any order of a foreign court requiring the removal from Ontario of any business records. Relevant portions of the Premier's statement are printed at page 17a of the appendix.

It is manifest from the provisions of the Ontario Act and the statements of the then Premier of Ontario that the Canadian Company is now in jeopardy under this statute of its home province of Ontario and that only a granting of this petition and a reversal of the lower court can remove this danger. The statements of the Premier of Ontario also illustrate the importance to other nations of any attempt to assert jurisdiction over foreign parents of American subsidiaries.

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* The Economic Competition Bill of The Netherlands is another indication of international impact of anti-trust lawsuits in this country involving alien corporations. That bill was adopted on March 14, 1956, and was the direct outgrowth of the "oil cartel" litigation by the United States government. Article 30 prohibits compliance with measures or decisions of another country regulating competition without permission of The Netherlands' government. Friedmann, Antitrust Laws— A Comparative Symposium 278 (1956).

Other Factors Supporting the Use of the Extraordinary Writ.

In determining whether or not an extraordinary writ should issue, it is proper to consider the inconvenience and expense of allowing a case to proceed to final judgment without correcting the unauthorized action of the District Court. The importance of this factor is emphasized in the *United States Alkali Export* case, *supra*, 325 U. S. at 204. In *Ex parte Skinner & Eddy Corp.*, 265 U. S. 86, the petitioner sought review by mandamus of an interlocutory order of the Court of Claims. The Court of Claims had refused to allow the plaintiff in an action before it to dismiss the action without prejudice. This Court held that the plaintiff was entitled to a voluntary dismissal and granted the extraordinary writ. It reasoned as follows:

> "It would be a useless waste of time and effort to enforce a trial in the Court of Claims if we were, upon appeal, to find that the petitioner was unjustly deprived of his substantial right to dismiss his petition, as we should have to do for the reasons stated" (p. 96).

In the recent case of *Bankers Life & Casualty Co.* v. *Holland*, 346 U. S. 379, 388, Justice Frankfurter pointed out in his dissenting opinion, in which Justices Minton and Jackson joined, that the ruling of the majority denying mandamus left open the question whether the writ would also be denied in circumstances where postponing of review would involve "a protracted trial entailing heavy costs and great inconvenience". The instant case will require just such a trial. Failure to review the district judge's assertion of jurisdiction would require the Canadian Company to defend itself in an action involving complicated legal and factual issues, many witnesses and innumerable

documents. It will subject the Canadian Company to the inconvenience and expense occasioned by the almost unlimited pre-trial discovery which complex antitrust litigation invariably involves.

Congress has not seen fit to impose such burdens on foreign corporations outside the jurisdiction of the United States courts. It has in each of its last three sessions failed to enact a bill which in substance provided, by a proposed amendment to the Clayton Act, that any alien corporation doing business in the United States through a subsidiary, affiliate or otherwise would be required to produce papers from abroad for use in antitrust litigation in the United States. H. R. 7339, 98 Cong. Rec. 3332 (82d Cong., 2d Sess. 1952); H. R. 391, 99 Cong. Rec. 61 (83d Cong., 1st Sess. 1953); H. R. 642, 101 Cong. Rec. 44 (84th Cong., 1st Sess. 1955).

Congress did not see fit to enact the proposed statutes. It is respectfully submitted that the court below has gone farther than Congress itself has been willing to go in subjecting alien corporations to jurisdiction of our courts in antitrust litigation.

Such disregard of congressional purpose is even more significant when as the result every foreign corporation which has an American subsidiary becomes subject to the jurisdiction of the United States courts. This impact upon our relations with other nations and their citizens gives the case a public importance which provides additional justification for resort to the extraordinary writ. *Ex parte Peru*, 318 U. S. 578.

It is apparent that there are present in this case all of the factors which have been considered heretofore by this Court to require the issuance of an extraordinary writ: a clearly erroneous assertion of jurisdiction, serious prejudice to the party over which jurisdiction was asserted,

subjection of a party to expensive and time-consuming judicial proceedings, subversion of an important congressional purpose and impact upon international commerce and upon our relations with other nations, presenting a problem of great public importance.

Accordingly this Court should exercise its supervisory powers now and grant the writ of certiorari and reverse the decision below.

III.

The Ruling of the Court of Appeals that the Legal Difficulty of a Jurisdictional Question is a Sufficient Ground for Denying the Extraordinary Writ Should Be Reversed by this Court in the Interest of Efficient Judicial Administration.

The Petitioner has consistently contended, and believes that it has demonstrated, that the ruling of the District Court was not merely doubtful but was plainly wrong.

Assuming, however, with the Court of Appeals, that the error of the lower court was not clear but that there was some difficulty about the legal question, is this a sufficient ground for denying the extraordinary writ? The Petitioner contends that it is not and that the contrary ruling of the Court of Appeals is of sufficient importance to procedure in the federal courts that this Court should grant the writ of certiorari and reverse the decision below.

The magnitude of a judge's error should not be relevant in determining whether the extraordinary writ should issue. The crucial question is whether the circumstances justify a departure from the "final judgment" rule. There are many situations where the Appellate Court's consideration of an

interlocutory order at some time prior to final judgment is desirable in order to prevent hardship to the parties or usurpation of jurisdiction by the lower court. Not all of these situations can be dealt with by specific statutory provisions permitting interlocutory appeals. The question in every case is whether it will be conducive to efficient judicial administration to provide review of the interlocutory jurisdictional order through the flexible device of the extraordinary writ. See 6 Moore *Federal Practice* 68-72 (2d ed. 1953).

This approach to the problem, which this Court has adopted in recent decisions, plainly leaves no room for denial of the writ merely because the question to be decided is a difficult one. When extensive discovery has been already conducted for the express purpose of adducing the relevant facts, the legal decision will not become easier by being postponed. If a decision at an early stage in the litigation will expedite matters and prevent hardship to a party, the decision should be made irrespective of its difficulty.

There is no basis for the statement of the Court of Appeals that further jurisdictional facts might be developed in the course of the proceedings. The plaintiffs were given every opportunity to uncover and were furnished the facts bearing on jurisdiction, through depositions and the production of documents. Certainly the facts relevant on the jurisdictional question should be and were ascertainable, and were ascertained, without deferring the question for a trial on the merits, which necessarily would involve these and many other facts. Such a postponement of appellate review would constitute in this case a denial of any effective appellate review of the jurisdictional question.

In the cases relied on by the Court of Appeals where the extraordinary writ was denied because the decision below was not clearly wrong, the doubt arose from a factual deficiency in the record rather than merely a question of law. Those cases provide no support whatever for the decision of the Court of Appeals in the instant case.

In *Ex parte Muir*, 254 U. S. 522, a suit in admiralty had been commenced *in rem* against a British vessel. Private counsel representing the British Embassy appeared as *amicus curiae* and presented a suggestion that the vessel was in the public service of Great Britain and that the court should therefore decline to exercise jurisdiction. When the libelant called upon the respondent and the *amicus* to produce the ship's papers and other documents which might throw light on the status of the vessel, they refused to do so, contending that the mere suggestion was sufficient to require dismissal of the proceeding.

The Supreme Court pointed out, in denying the extraordinary writ, that the British Government might have presented its suggestion through diplomatic channels or it might have intervened as a party in the action. The Court said that since the claim was not presented in one of these more satisfactory ways it was not entitled to full consideration.

It was against this background that the Court used the language quoted by the Court of Appeals in this case, to the effect that where the jurisdiction of the lower court is merely doubtful in fact the extraordinary writ should be denied. Obviously such a ruling was appropriate in the *Muir* case. The facts had not been developed and the jurisdictional question was not properly raised. But the situation in the *Muir* case was in no way similar to the situation presented to the Court of Appeals in the instant

case where the record was and is ample, and indeed as complete as it needs to be, or will ever be.

The other case relied on by the Court of Appeals was *Ex parte Chicago, Rock Island & Pacific Railway Co.*, 255 U. S. 273. There the District Court had decided a jurisdictional question on the basis of evidence which was in no way recorded and was not set out in the petition for mandamus. This Court concluded that under these circumstances the jurisdiction below was merely doubtful and that the writ should not issue. This was obviously the correct result, since this Court had no proper basis for reviewing what was done below. That case has no application here, however, since the facts upon which the District Court relied were conceded by the Petitioner, and the entire record in the lower court was available.

Where a jurisdictional question has not been properly raised, or where the facts have not been developed or the evidence before the lower court was not recorded, it is of course clear that the issuance of an extraordinary writ is inappropriate. Petitioner submits, however, that the mere legal difficulty of the jurisdictional question cannot support a denial of the writ. The contrary ruling of the Court of Appeals subverts the effective use of the extraordinary writs in the very situations where they are most necessary. In the interest of efficient judicial administration in the federal courts this Court should grant the writ of certiorari and reverse the decision below.

Conclusion.

This case presents national issues of both antitrust policy and federal procedure which urgently require immediate decision by this Court. The proper resolution of

these issues is of importance to the efficient administration of justice in the federal courts and to the business and financial world, to international commerce, and to our relations with other nations, as well as being vital to the Petitioner which has been subjected to what it believes an unwarranted and serious error.

Petitioner respectfully prays that this Court review and reverse the decisions below.

Respectfully submitted,

JOHN F. SONNETT,
Counsel for Petitioner, Massey-Harris-Ferguson, Ltd.

Of Counsel:

WILLIAM MERCER ALEXANDER,
COOPER TURNER, JR.,
KENNETH D. WALLACE,
THOMAS R. PRICE.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1956.

MASSEY-HARRIS-FERGUSON LIMITED,

Petitioner,

v.

HON. MARION SPEED BOYD, United States Judge for the Western District of Tennessee,

Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS OR OTHER APPROPRIATE WRIT TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE.

Petitioner herein today filed with this Honorable Court a Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit under 28 U. S. C. §1254(1), to review an order of said Court of Appeals denying a petition for writ of mandamus or other appropriate writ to the United States District Court for the Western District of Tennessee.

In the event said Petition for Writ of Certiorari is denied, Petitioner hereby files this motion for leave to file with this Honorable Court the said petition as a Petition for Writ of Mandamus or Other Appropriate Writ to the District Court of the United States for the Western District of Tennessee.

The jurisdiction of this Court is invoked under Section 1651(a) of Title 28, United States Code. The authority of this Court to issue an extraordinary writ to review the action of the District Court, after the denial of such a writ by the Court of Appeals, is sustained by *Ex parte Kawato*, 317 U. S. 69. See also *Ex parte Peru*, 318 U. S. 578; *McCullough v. Cosgrave*, 309 U. S. 634; *Ex parte United States*, 287 U. S. 241.

Respectfully submitted,

JOHN F. SONNETT,
Counsel for Petitioner, Massey-Harris-Ferguson, Ltd.

Of Counsel:

WILLIAM MERCER ALEXANDER,
COOPER TURNER, JR.,
KENNETH D. WALLACE,
THOMAS R. PRICE.

APPENDIX.

Section 12 of the Clayton Act (15 U. S. C. §22.)

"§22. District in which to sue corporation.

"Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. (Oct. 15, 1914, ch. 323, §12, 38 Stat. 736.)"

All Writs Statute (28 U. S. C. §1651(a)).

"§1651. Writs.

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

"(b) An alternative writ or rule *nisi* may be issued by a justice or judge of a court which has jurisdiction. (June 25, 1948, ch. 646, §1, 62 Stat. 944; May 24, 1949, ch. 139, §90, 63 Stat. 102.)"

Opinion.

No. 13121

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MASSEY-HARRIS-FERGUSON, LIMITED, Petitioner, *v.* HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE, Respondent.	PETITION for Writ of Mandamus or Prohibition or Other Appropriate Writ.

Decided April 12, 1957.

Before: ALLEN, MILLER and STEWART, Circuit Judges.

MILLER, Circuit Judge. Petitioner, Massey-Harris-Ferguson, Limited, a Canadian corporation with its principal office in Toronto, Ontario, Canada, has filed in this court its Petition for Writ of Mandamus or Prohibition or Other Appropriate Writ against Hon. Marion Speed Boyd, United States District Judge for the Western District of Tennessee, pursuant to Section 1651(a), Title 28, U. S. Code. The petition prays that this court issue an appropriate writ directing Respondent to vacate and set aside the order entered by him on January 4, 1957 in Action No. 2969, U. S. District Court for the Western District of Tennessee, in which Southland Tractors, Inc., and Farm Tractors, Inc., are plaintiffs, and the Petitioner, herein referred to as the Canadian Corporation, together with Massey-Harris-Ferguson, Inc., a corporation organized under the laws of Maryland, and a wholly-owned subsidiary of the Petitioner, herein referred to as the American Company, are named defendants.

Opinion.

In the District Court action, the plaintiffs claim to have been damaged in amounts exceeding $2,500,000 and $3,150,000, respectively, by reason of violations by the defendants of the provisions of the Sherman Anti-Trust Act, Sections 1-33, Title 15, U. S. Code, for which alleged wrongs they claim triple damages. No question is raised about jurisdiction over the American Company. Process against the Canadian Corporation was served in Memphis upon an Assistant Branch Manager of the Memphis Branch of the American Company, and in Detroit, Michigan, upon Herman Klem, who was an officer of both the American Company and the Canadian Corporation. The Canadian Corporation appeared specially and moved to quash the purported service upon it upon the grounds that it was not an inhabitant of or transacting business in the Western District of Tennessee and was not either actually or legally present or found in the Western District of Tennessee, and accordingly was not subject to suit in said District. The motion was supported by affidavits of officers and agents of the two companies stating the separate corporate existence of the two companies, that the Canadian Corporation was not qualified to do business in Tennessee and had never maintained any office or place of business in the Western District of Tennessee, that it had never done any advertising, solicited any business, made any sales, or appointed anyone as its agent in the Western District of Tennessee, that it had never made any sales to the plaintiffs, and that the American Company had never acted as the agent for the Canadian Corporation but had in all its dealings with the plaintiffs acted solely in its own name and for its own account. The plaintiffs filed a verified response to the motion to quash which denied the allegation of the Canadian Corporation that it was not transacting business in the Western District of Tennessee, and stated that the Canadian Corporation had, since long prior to August 1953, carried on a tremendous business in the Western District of Tennessee through its own instrumentalities and agen-

cies, and that the American Company was organized as an outlet for the sale in the United States of products manufactured by the Canadian Corporation and has at all times since its organization been an instrumentality and agency for the Canadian Corporation. Several hundred pages of depositions, which included numerous exhibits, were taken on the issue involved, which evidence has been forwarded to this Court for its consideration.

The District Judge made the following findings of fact:

> "The American company maintains a district office at Memphis with a manager, and assistant manager, and certain other personnel. This office is the distributor for farm machinery manufactured by both the American company and the Canadian company. It appears that merchandise of the approximate value of three million dollars yearly was shipped into Memphis from the Canadian concern, and that this accounts for between sixty and seventy-five percent of the business done by the local office. The Canadian company, incidentally, claims that all of these sales are the result of contracts between it and the American company. However, the correspondence in the record reveals that the American company was mainly the sales outlet in the United States for the Canadian concern. There are (interlocking) officers and directors as between the two. Annual statements of the Canadian company shows the American company as a division or branch of the Canadian company, which would mean that the Memphis office is probably a sub-branch. Engineers are sent to Memphis from Canada to run field tests for the purpose of developing farm equipment for use by farmers in this trade territory or section of the country. These engineers paid expense money by the local office.

Opinion.

> "The whole structure of the Canadian company is, in the Court's opinion, that of a very large enterprise with full control of all of its many operations, including the Memphis office in this judicial district. The American company operates wholly under the control and dominion of the Canadian company, even to the extent of procuring approval for the expenditure of moneys of any substantial amount."

The District Judge ruled that for all intents and purposes there was only one corporation, the parent Canadian Corporation, with the American Company and affiliates being merely adjuncts or instrumentalities of the Canadian Corporation; that the activities and operations of the Canadian Corporation were a continuous course of business of a substantial character within the Western District of Tennessee; and that the Canadian Corporation was found in the District, was transacting business in the District, and was subject to the jurisdiction of the court and its processes. The motion to quash was overruled by order of January 4, 1957, which is the order the present application for Mandamus by the Canadian Corporation seeks to have vacated.

Petitioner contends that the ruling of the District Judge that the Court has jurisdiction over it is clearly erroneous, that it encroaches upon the sovereignty of Canada and will expose Petitioner or its officers to fines and penal provisions under Canadian or Ontario laws or to contempt of the lower court, that the Petitioner has no adequate remedy through any ordinary appellate procedure which might eventually be available to it, and that it will suffer irreparable injury from the action of the District Judge if it is required to proceed with the defense of the case, and that Mandamus or Prohibition under the All Writs Act, Sec. 1651, Title 28, U. S. Code, is the appropriate remedy where a District Court erroneously asserts jurisdiction over an alien corporation clearly not subject to jurisdiction. On the question of jurisdiction it relies chiefly,

upon *Cannon Manufacturing Co.* v. *Cudahy Packing Co.*, 267 U. S. 333. See also: *People's Tobacco Co., Ltd.* v. *American Tobacco Co.*, 246 U. S. 79, and *Eastman Kodak Co.* v. *Southern Photo Co.*, 273 U. S. 359. The District Judge relied chiefly upon *United States* v. *Scophony Corp.*, 333 U. S. 795. See also: *International Shoe Co.* v. *Washington*, 326 U. S. 310; *Travelers Health Assn.* v. *Commonwealth of Virginia*, 339 U. S. 643; *Scholnik* v. *National Airlines*, 219 F. (2) 115, C. A. 6th, cert. denied, 349 U. S. 956, rehearing denied, 350 U. S. 868.

In the present state of the litigation we consider it inadvisable to rule on the issue involved. The record in its present shape indicates that the question is a difficult one, and the ruling doubtful, both as a matter of fact and in point of law. As was said by the Supreme Court in *Ex parte Muir*, 254 U. S. 522, 533, "The suit is still in the interlocutory stage. The Court may take up again the question of its jurisdiction. If it does, the inquiry may proceed on other lines and the facts may be brought out more fully than before. In addition, the question may be re-examined in regular course on an appeal from the final decree." The Court in that case held that where the existence or absence of jurisdiction is in doubt, the granting or refusal of the writ is discretionary, and deemed it a proper exercise of discretion to refuse the writ. See also: *Ex parte Chicago, R. I. & Pac. Ry.*, 255 U. S. 273.

Assuming that it should be found to be erroneous, it is subject to review by us if and when a final judgment should be entered against the Petitioner. *Eastman Kodak Co.* v. *Southern Photo Co., supra.* The present ruling is not a final order, but interlocutory in nature, from which an appeal does not lie. Sec. 1291, 1292, Title 28, U. S. Code. In the usual case the rule against piecemeal appeals is not to be circumvented by resort to Mandamus or Prohibition. *Ex parte Harding*, 219 U. S. 363; *Roche* v. *Evaporated Milk Association*, 319 U. S. 21, 27-31; *Bankers Life & Casualty Co.* v. *Holland*, 346 U. S. 379.

Opinion.

We do not consider the recent decision of the Supreme Court in *La Buy* v. *Howes Leather Co.*, 352 U. S. 249, as changing the rule. It recognized that Mandamus should be resorted to only in extreme cases, but held that the unusual circumstances existing in that case made the use of the writ appropriate. In our opinion, the present case does not involve such unusual circumstances. *Ex parte Fahey*, 332 U. S. 258; *Direct Transit Lines* v. *Starr*, 219 F. (2) 699, C. A. 6th; *Sunbeam Corp.* v. *Picard*, 227 F. (2) 596, C. A. 6th. See also: *Eastman Kodak Co.* v. *Southern Photo Co.*, *supra*, 273 U. S. 359, 367-368, where the usual procedure was followed after an adverse ruling to the defendant on the question of jurisdiction.

The Petition for Writ of Mandamus or Prohibition or Other Appropriate Writ is denied.

Judgment.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

No. 15,121.

MASSEY-HARRIS-FERGUSON, LIMITED,
Petitioner,

v.

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,
Respondent.

Order.
Filed April 12, 1957.

Before:

ALLEN, MILLER AND STEWART,
Circuit Judges

The petition of Massey-Harris-Ferguson, Limited, for Writ of Mandamus or Prohibition or Other Appropriate Writ directed to the respondent Honorable Marion Speed Boyd, United States District Judge for the Western District of Tennessee, together with briefs for the respective parties, having been considered by the Court,

IT IS ORDERED that said petition be denied.

Approved for entry:

/s/ SHACKELFORD MILLER, JR.
United States Circuit Judge

Opinion of Judge Boyd of January 3, 1957.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

SOUTHLAND TRACTORS, INC. and FARM TRACTORS, INC., Plaintiffs,

vs.

MASSEY-HARRIS-FERGUSON, INC., MASSEY-HARRIS-FERGUSON, LIMITED, and LYNN RUSSELL, Oklahoma City, Oklahoma, Defendants.

Civil Action No. 2969.

PROCEEDINGS ON JANUARY 3, 1957.

BE IT REMEMBERED That the above entitled cause came on to be heard on this the 3rd day of January, 1957, at nine-thirty o'clock A. M...on Motion of Defendant to Quash Service of Process, and after hearing the arguments of counsel in open court, the Court announced the following ruling:

The Court: Well, gentlemen, we have gone into this question fully today. The Court has examined the affidavits and the depositions on file, and has had the benefit of your authorities and the oral argument, so the Court will give you its views briefly at this time.

In the first place the determination of matters of jurisdiction and venue and liability to service of process in the Federal judicial system is usually somewhat difficult, and this case is no exception. The books are full of cases, but precedents do not necessarily control, as Mr. Turner puts it, since each case must be governed by its own peculiar state of facts.

The burden is upon the plaintiffs in this case, as we all seem to agree, to prove the jurisdictional allegations of their complaint, that is, that this Canadian concern, referred to as Limited, was in fact transacting in the ordinary and usual sense business of a substantial character in the Western District of Tennessee so as to make it amenable to the processes of this Court.

Now, as best the Court can understand, the plaintiffs have met this burden, and have shown the activities and operations of the Canadian company were a continuous course of business, business of a substantial character, throughout the period here in question, which makes it subject to suit in this jurisdiction. Again, as best the Court can tell, an important segment or part of its over-all business of manufacturing and selling and the distribution of its products was during all times material transacted within the confines of this judicial district.

There seems to be a difference of opinion between counsel, but the Court is warranted in saying here, Mr. Turner, I believe, that for all intents and purposes there is really only one corporation, and that is the parent Canadian entity referred to, as I say, as Limited, the American company and its wholly owned subsidiaries or affiliates being merely adjuncts or instrumentalities of the Canadian corporation.

The Canadian corporation's motion is based on the broad contention that it does or transacts no business in this district in the legal sense. It contends it had no agreement or business relations with the plaintiff which would authorize the suit in this court.

The facts, among other things, revealed through the affidavits, depositions and exhibits, are substantially as follows: The American company maintains a district office at Memphis with a manager, and assistant manager, and certain other personnel. This office is the distributor for farm machinery manufactured by both the American company and the Canadian company. It appears that mer-

chandise of the approximate value of three million dollars yearly was shipped into Memphis from the Canadian concern, and that this accounts for between sixty and seventy-five percent of the business done by the local office. The Canadian company, incidentally, claims that all of these sales are the result of contracts between it and the American company. However, the correspondence in the record reveals that the American company was mainly the sales outlet in the United States for the Canadian concern. There are (interlocking) officers and directors as between the two. Annual statements of the Canadian company shows the American company as a division or branch of the Canadian company, which would mean that the Memphis office is probably a sub-branch. Engineers are sent to Memphis from Canada to run field tests for the purpose of developing farm equipment for use by farmers in this trade territory or section of the country. These engineers paid expense money by the local office.

The whole structure of the Canadian company is, in the Court's opinion, that of a very large enterprise with full control of all of its many operations, including the Memphis office in this judicial district. The American company operates wholly under the control and dominion of the Canadian company, even to the extent of procuring approval for the expenditure of moneys of any substantial amount.

Now, the defendant Canadian company, among others, relies upon the case of Cannon Manufacturing Company against Cudahy Packing Company, reported in 267 U. S., Page 333, a breach of contract case, in which the Supreme Court in 1925 held that the presence of a corporate subsidiary in a state does not necessarily subject the parent corporation to the jurisdiction of the courts of that state.

The cases relied on by the plaintiff, for the most part, are cases arising under the antitrust laws, and particularly under Section 12 of the Clayton Act, carried into the Code as Section 22 of Title 15.

Opinion of Judge Boyd of January 3, 1957.

In United States against Scophony, a case relied on most heavily by the plaintiffs, Justice Rutledge, speaking for the Supreme Court in 1948, makes a very definite distinction in this regard when application is made under Section 12, and this to the Court seems to be the final word by the Supreme Court on this issue.

The Court in the Scophony case said:

> "The practical, everyday business or commercial concept of doing or carrying on business 'of any substantial character' became the test of venue."

Now, after reviewing some of the prior decisions, the Court used this rather pertinent language:

> "Thus, by substituting practical, business conceptions for the previous hair-splitting legal technicalities encrusted upon the "found"-"present"-"carrying-on-business" sequence, the Court yielded to and made effective Congress' remedial purpose. Thereby it relieved persons injured through corporate violations of the antitrust laws from the "often insuperable obstacle" of resorting to distant forums for redress of wrongs done in the places of their business or residence. A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating to its headquarters defeat or delay the retribution due."

And there is this rather pertinent paragraph:

> "In this case, however, we deal with a company incorporated outside the United States. But there can be no question of the existence of "jurisdiction," in the sense of venue under Section 12, over Scophony in the Southern District of New York. To say that on the facts presented Scophony transacted no business "of any substantial character"

there during the period covered by institution of the suit and the times of serving process would be to disregard the practical, nontechnical, business standard supplied by "or transacts business" in the venue provision. It would be also to ignore the fact that Scophony then and there was carrying on largely, if not exclusively, the only business in which it could engage at the time."

Now, the Scophony case involved a motion to quash by the English company, which operated in the Southern District of New York through its American subsidiary. The District Court granted the motion, and the Supreme Court reversed and remanded the case, holding that under Section 12 the District Court did have jurisdiction. Though the Supreme Court in Scophony did not directly overrule the Cannon and similar cases, it seems to have, pursuant to the definite trend, restricted its scope to very definite limits. We are bound to give due consideration, gentlemen, to this Scophony case in solving our problem here today.

Now, there are recent District Court opinions noted in the annotations following Section 22, which are in keeping, in the Court's opinion, with this Scophony case. To mention a couple, there is the Sudbury Wire Rope Manufacturing case, and the Abrams case discussed here today.

One further quote from the Scophony case is from a concurring opinion written by Justice Frankfurter, who agreed with the result, but thought it should be stated more briefly. Mr. Justice Frankfurter states in concurring:

"I deem it appropriate to state why I concur merely in the Court's result.

"The only question in this case is whether Scophony Limited, a British corporation, which has its offices and principal place of business in London, may be made a party defendant in a suit by the United States for violation of the Sherman Law

pending in the Southern District of New York. The corporation may be brought into court in that District if its activities there satisfy the requirements of Section 12 of the Clayton Act. According to this provision, Scophony Limited is properly a party defendant in this suit only if, by virtue of its activities, it is "found or transacts business" in the Southern District of New York, and it may be served in that District if it is "found" there.

"Whether a corporation "transacts business" in a particular district is a question of fact in its ordinary untechnical meaning. The answer turns on an appraisal of the unique circumstances of a particular situation. And a corporation can be "found" anywhere, whenever the needs of law make it appropriate to attribute location to a corporation, only if activities on its behalf that are more than episodic are carried on by its agents in a particular place. This again presents a question of fact bearing on the unique circumstances of a particular situation, to be ascertained as such questions of fact are every day decided by judges."

So, it follows, gentlemen, in the Court's view of this matter, that the parent Canadian concern is found in this district and is transacting business in this district, and is subject to the jurisdiction of this Court and its processes. Service on the assistant manager in Memphis, and service in Detroit, seems to the Court to be valid.

Motion to quash is overruled.

Now, these, gentlemen, are the Court's rough, general views, and what the Court has said briefly will serve as findings and conclusions under the rules, at least for the present. If more detailed findings are necessary, counsel may propose some during the next few days. In the meanwhile, Mr. Taylor, get up an order on the Court's ruling today.

Opinion of Judge Boyd of January 3, 1957.

I hereby certify that the foregoing eleven pages constitute the ruling of the Court on January 3, 1957, on Motion to Quash in the case of

SOUTHLAND TRACTORS, INC., et al

v.

MASSEY-HARRIS-FERGUSON, INC., et al
Civil Action No. 2969
This 4th day of January, 1957.

MIRIAM TILL
Official Court Reporter
United States District Court

Western District of Tennessee

Order of Judge Boyd of January 4, 1957.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

SOUTHLAND TRACTORS, INC., *et al.*, Plaintiffs, *vs.* MASSEY-HARRIS-FERGUSON, INC., *et al.*, Defendants,	No. 2969 Civil.

ORDER.

This cause came on for hearing upon the complaint, the motion of Massey-Harris-Ferguson, Limited to quash service of process, and the affidavits filed in support of the motion, the plaintiffs' response to said motion, and upon the depositions of C. R. Haggard, H. H. Bloom, Cecil B. Milne, J. L. Hooker, L. M. Sweeney and H. G. Klemm and all the exhibits introduced in evidence to the depositions of witnesses and by stipulation, the stipulation of counsel with respect to the use of the depositions and exhibits, defendants' waiver of signature to the deposition of Cecil B. Milne, the affidavits of Howard Sullins and the exhibits thereto, Wesley Patch and Ernest Newbern, Jr., the return of the Marshal of processes served upon V. N. Deitling in Memphis, Tennessee, and H. G. Klemm, Vice-President of Massey-Harris-Ferguson, Limited, in Detroit, Michigan, and the Court having examined the evidence of witnesses and the documentary evidence filed in the cause and heard arguments of counsel is of the opinion that the defendant, Massey-Harris-Ferguson, Limited has at all pertinent times transacted business in the Western Dis-

trict of Tennessee, and that the processes issued by this Court and served upon V. N. Deitling and H. G. Klemm were both valid and adequate to bring Massey-Harris-Ferguson, Limited into court but that the service on Kenneth G. House was not effective, and that the said defendant, Massey-Harris-Ferguson, Limited, is amenable to suit in this District both with respect to venue and service of process and that the motion to quash should be overruled for the reasons stated by the Court in its opinion delivered at the conclusion of the hearing, which opinion will be treated as a finding of facts and conclusions of law and become a part of the record in the cause;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the "Motion To Quash Returns and Purported Service Of Summons And Complaint And To Dismiss Complaint" be and the same is hereby overruled and the defendant, Massey-Harris-Ferguson, Limited, is allowed ten (10) days from the entry of this order within which to answer the complaint as amended. (Call Turner re this.)

IT IS FURTHER ORDERED that the motion filed by Lynn Russell to quash service of process and dismiss action as to him is sustained because there is no evidence that Lynn Russell ever transacted any business within the Western District of Tennessee or has been found here.

MARION SPEED BOYD
United States District Judge

Statement of Premier of Ontario to Ontario Legislature, October 27, 1947.

25. The Premier said in his statement to the Ontario Legislature:

> "It must be remembered that these subpoenas were directed to companies and officers of those

companies doing business entirely within the Province of Ontario, *except insofar as they may engage in selling activities related to their export business in the United States.** Furthermore, most of the companies in question, if not all, are companies operating under charters issued by the Canadian Government, or by the Provincial Governments of Canada. They are strictly Canadian companies and it happens that they are also companies of the utmost importance to the Canadian economy since their combined production for export constitutes our largest type of export in dollar value.

"First, let us examine the effect of compliance with such a subpoena. It would result in most of the important records * * * being moved outside the jurisdiction of our ov[illegible]mpany[s'] and other laws for an indefinite period. [illegible]hose records are an essential part of the daily business of great industries giving direct and indirect employment to scores of thousands of Canadian w[illegible]en.

"Serious though this result would be, of infinitely more concern to every Canadian must be the far-reaching implications of such a procedure. *It implies the right of the Government of the United States* (by a subpoena *duces tecum*) *to invade the territorial integrity of Canada without application to the Canadian Government, to any provincial government, to any Canadian Court, or to any established channel of international representation in regard to international business.* There has been no similar proceed- has reason to believe that such a requirement has ing [of a "fishing expedition" by a subpoena *duces tecum*] during the long and happy relationship between Canada and the United States which has

* Emphasis supplied throughout.

Statement of Premier of Ontario to Ontario Legislature, October 27, 1947.

asserted the jurisdiction of the Government of the United States and of United States Courts over Canadian corporations and individuals doing business within Canada under Canadian laws. These proceedings are particularly improper in view of the fact that we have our own Anti-Combine Laws in Canada under which there are just as wide powers to prevent improper combinations in restraint of trade as are contained in the Anti-Trust Laws of the United States.

"If the Attorney-General of the United States does in fact believe that there has been any improper combination in restraint of normal trade, then the correct procedure would be for him to lay the facts in his possession before the proper authorities at Ottawa who could then take such action as was deemed advisable upon the evidence placed before them.

• • •

"This government objects very strongly to fishing expeditions through our own Courts, and it is certainly not prepared to approve of fishing expeditions of this nature into the affairs of our companies through the Courts of the United States in regard to something which is not properly before those Courts.

"That being so, I am introducing a bill which makes it a legal offence to comply with any requirement of a judicial authority outside of Ontario which would cause to be removed from this province to a point outside of Ontario any of the essential records of business being carried on in this province. It further provides that if the Attorney-General, or any person having an interest in a business so affected, been made or is likely to be made, proceedings may be taken before the Supreme Court of Ontario to insure that such records will not be removed.

• • •

Sections of the Revised Statutes of Canada (Ch. 307, 1952) Relating to Pre-trial Depositions and Production of Documents.

"It may well be asked why such an obvious protection to our own economy and the orderly conduct of business upon which that economy rests should not have been in existence long before this. The simple truth is that at no time in the past has any such extra territorial authority been asserted, and it would appear that no government anticipated the possibility that such an improper proceeding would ever be undertaken.

"I need hardly say that when this bill becomes law it will effect only companies operating in Ontario. I recognize that in population Ontario is a very small jurisdiction compared with that of United States. Nevertheless, I trust no citizen of the United States will forget that Canadians are just as proud of their own nationality and just as jealous of their own sovereignty as is any citizen of their own country. I hope that the Government of the United States will see fit to withdraw these proceedings and follow the course which is in keeping with that close international friendship which has been an example to the whole world."

Sections of the Revised Statutes of the Province of Ontario (Ch. 44, 1950) Relating to Removal of Business Records.

SECTION 1.

"No person shall pursuant to or under or in a manner which would be consistent with compliance with any requirement, order, direction or subpoena of any legislative, administrative or judicial authority in any jurisdiction outside of Ontario, take or cause to be taken, send or cause to be sent or remove or cause to be removed from a point within Ontario to a point outside of Ontario, any account, balance sheet, profit and loss statement or inventory or any resume or digest thereof or any other record, statement, report or material in any way relating to any business carried on in Ontario * * *."

SECTION 2.

"(1) Where the Attorney-General or any person having an interest in a business as mentioned in Section 1 has reason to believe that a requirement, order, direction, subpoena as mentioned in Section 1 has been or is likely to be made, issued or given in relation to such business, he may apply to a judge or local judge of the Supreme Court in chambers for an order requiring any person, whether or not such person is named in the requirement, order, direction or subpoena, to furnish an undertaking and recognizance for the purpose of insuring that such person will not violate Section 1 and the judge may make such order as he may deem proper.

"(2) Every person who, having received notice of an application under this section, violates this Act shall be deemed to be in contempt of court and liable to one year's imprisonment.

"(3) Every person required to furnish an undertaking or recognizance who violates this Act shall be in contempt of court and in addition to any penalty provided by the recognizance shall be liable to one year's imprisonment. 1947, c. 10, s. 2."

Complaint.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE.

SOUTHLAND TRACTORS, INC. and FARM TRACTORS, INC., Plaintiffs,

v.

MASSEY-HARRIS-FERGUSON, INC., MASSEY-HARRIS-FERGUSON, LIMITED, and LYNN RUSSELL, Oklahoma City, Oklahoma, Defendants.

No. 2969.

COUNT I.

1. Jurisdiction of this Court is based upon the original jurisdiction of this Court over civil actions or proceedings, arising under any Act of Congress, regulating commerce, or protecting trade and commerce against restraints, monopolies, unfair methods of competition and unfair and deceptive acts or practices in commerce, conferred by 15 U. S. C. A. Section 15, and other applicable statutes. This controversy involves violations of Sections 1 and 2 of the Sherman Anti-Trust Act, 15 U. S. C. A. Sections 1 and 2; Chapter 349, Acts of August 27, 1894, 15 U. S. C. A. Section 8; Chapter 323, Acts of October 15, 1914; and Chapter 592, Acts of June 19, 1936, 15 U. S. C. A. Section 13(e); Section 3, Chapter 323, Acts of October 15, 1914, 15 U. S. C. A. Section 14; Section 7, Chapter 323, Acts of October 15, 1914, 15 U. S. C. A. Section 18, and Chapter 311, Acts of September 26, 1914, 15 U. S. C. A. Section 45(a).

2. Plaintiff, Southland Tractors, Inc., is a corporation organized under the laws of Tennessee, and is engaged generally in the purchase and sale of farm machinery, equipment and implements as a wholesale distributor. Its principal place of business is in Memphis, Tennessee. Since its organization it has purchased and sold tractors and farm machinery, equipment and implements produced by Harry Ferguson, Inc., except for the periods hereinafter mentioned. Its trade territory has been and still is generally West Tennessee, all of Arkansas, a part of Alabama and North Mississippi.

3. Plaintiff, Farm Tractors, Inc., is a corporation organized under the laws of Oklahoma. All of its capital stock is owned by Southland Tractors, Inc. Its business is generally the same as that of Southland Tractors, Inc.; except that its principal place of business is in Oklahoma City, and its trade territory was the State of Oklahoma and a part of the Texas Panhandle.

4. Massey-Harris-Ferguson, Inc., is a corporation organized under the laws of Maryland. It was at all times hereinafter mentioned engaged generally in manufacturing and selling farm tractors, equipment, machinery and implements. It claims a net worth in excess of $52,000,000.00. Its head office is in Racine, Wisconsin. It is a wholly owned corporate subsidiary of Massey-Harris-Ferguson, Limited. It is the outgrowth of the unlawful activities hereinafter set forth.

5. Massey-Harris-Ferguson, Limited, is a corporation organized and existing under the laws of the United Kingdom of Great Britain. It is a gigantic organization engaged, directly and through many subsidiaries, in manufacturing and selling farm tractors, equipment, machinery and implements throughout the entire World. As of October 31, 1954, it claimed total current assets of $156,560,374.00,

and a tangible net worth of $86,956,945.00. Its total World Sales for the year ended October 31, 1955, were $368,049,180.00. It occupies a dominant position in World trade and in the United States.

6. The defendants maintain a place of business and are engaged in business in Memphis, Tennessee, and have representatives in this District upon whom process can be served. (Wherever the word "defendants" is used, corporate defendant is intended unless otherwise indicated.)

If Massey-Harris-Ferguson, Limited, claims that it is not found in this district, then it can be found in the Southern District of New York and in the Eastern District of Michigan and process can be issued out of this Court and served on its agents in those districts and in order to avoid any delay and in order that the ends of justice may be served, process should also be issued and served on its agents in those districts pursuant to Section 22 of Title 15, U. S. C. A.

7. Harry Ferguson is, and for the past several years has been, an outstanding inventive genius; he has invented and developed farm tractors, equipment and implements, which, by reason of their distinctive features, have revolutionized the industry in mechanical farm machinery, equipment and implements; and those features have been and are now protected by patents. About 1948 Harry Ferguson, Inc., began to manufacture the specially designed Ferguson Tractors, and to sell those tractors together with the specially designed equipment, machinery and implements manufactured for it by others. A tractor factory with adequate capacity was built in Detroit, Michigan and the company continued with its plan of marketing its products through distributors, each being allotted designated territory, required to provide adequate capital, to have buildings, carry inventories of product and parts, maintain

service departments, and be financially able to purchase the Ferguson products as they were allotted, ordered, shipped and billed to them. The business was a successful one. Harry Ferguson and Harry Ferguson, Inc., were at all times unalterably committed to marketing Ferguson products through distributors and were unalterably opposed to marketing through company branches.

8. The defendants and their predecessor, Harry Ferguson, Inc., have at all times pertinent, required distributors to operate under written franchises, cancellable at their will upon comparatively short notice, and by the terms of which they have retained and exercised the right to exert economic pressure, and to dominate distributors' businesses and dictate business policies. The defendants and their predecessor have at all pertinent times reserved and exercised the right to approve or reject any dealer selected by a distributor, and have reserved this right with respect to dealers who apply direct for franchises. The defendants acquired and now maintain a complete monopoly over the manufacture, distribution, marketing and selling of all products designed, formerly manufactured and sold by Harry Ferguson, Inc., as well as all other products manufactured by the defendants. This constitutes a large and important segment of interstate commerce.

9. On January 7, 1949, a distributor's sales agreement was entered into by and between Harry Ferguson, Inc., and plaintiff, Southland Tractors, Inc., after the plaintiff had been required to make available approximately $85,000.00 for operating capital. The distributor agreement embraced the territory generally described in Paragraph 2 above; contemplated that plaintiff would purchase products from Harry Ferguson, Inc., procure dealers throughout the designated territory to whom the products would be sold, and who in turn would sell the products at retail to farmers. This plaintiff invested its money, purchased

inventories and, by aggressive and untiring efforts, built a substantial business, which grew continuously until the Fall of 1953. It built a fine dealer organization, with dealers strategically located throughout its trade territory, to whom it sold the farm tractors, machinery and equipment purchased from the defendants and their predecessor. In addition to the exclusive Ferguson line this plaintiff procured distributorships of other lines, including the Gleaner Combine, and has built a large and profitable business with the Gleaner Combine. It marketed the other lines through its dealers with whom it had established close, lasting and valuable business relationships.

10. By the early part of 1953 Harry Ferguson, Inc., was producing a large volume of products, and it was marketing those products through twenty-nine (29) distributorships and two thousand (2,000) retail dealers. The distributors had their own investments, had established business interests, not only in buildings, inventories, tools, etc., but good-will and dealer relationships. The volume done by distributors ran into millions of dollars annually. The volumes of plaintiffs' businesses ran into millions of dollars annually.

11. Massey-Harris Company, Limited, was a British Company, operating out of Canada and Great Britain, with Worldwide manufacture and sale of farm equipment, machinery and implements, but did not have products adequate to compete with the revolutionary Ferguson System products. Its net sales in 1952 exceeded $224,000,000.00.

12. Early in June, 1953, the president of Massey-Harris Company, Limited, met with Harry Ferguson, President of Harry Ferguson, Inc., and discussed business problems, as a result of which the idea was conceived that if Massey-Harris Company, Limited, could acquire all Ferguson patents for farm machinery, equipment and implements,

and the large volume of business built by Ferguson distributors, it could acquire a complete monopoly of all Ferguson System products, especially in the United States, including the businesses built by Ferguson distributors and then owned by them.

13. Pursuant to the purpose and idea as set forth in Paragraph 12, Massey-Harris Company, Limited, in August, 1953, entered into an agreement to acquire all of the capital stock of Harry Ferguson, Inc., as well as all other Ferguson companies (except Ferguson's French company), and thereby acquired absolute domination and control over all Ferguson patents, all manufacturing and marketing policies, together with complete control over Ferguson distributors and their businesses through the distributor franchise agreements. The resultant amalgamation made Massey-Harris-Ferguson, Limited, the second largest manufacturer of farm implements in the World.

Following up that conception, officers and representatives of the two companies, and others who joined the conspiracy, including, but not limited to James S. Duncan, then President of Massey-Harris Company, Limited, Herbert H. Bloom, Cecil B. Milne and Lloyd M. Sweeney, then Vice Presidents of Massey-Harris Company, Limited, or Massey-Harris-Ferguson, Inc., K. S. Spicer, then assistant to the President of Massey-Harris Company, Limited, and Horman G. Klemm and Albert A. Thornbrough, then Vice Presidents of Harry Ferguson, Inc., and J. L. Hooker, now a Director in Massey-Harris-Ferguson, Inc., proceeded forthwith to agree, combine and conspire to monopolize all interstate business in Ferguson products, and to unduly restrain Ferguson distributors and dealers in interstate commerce with the view to first impairing the distributors' ability to compete, and ultimately to acquire all of their businesses and dealers and eliminate the distributors. K. S. Spicer was among the most aggressive and vicious of the conspirators in the destruction of plaintiffs' businesses.

Plaintiffs are informed that he has, right on the eve of the filing of this suit, been transferred by the defendants to Australia. Lynn Russell, who worked under Spicer, joined the conspiracy and made admissions of important facts, which could have been proved by Spicer but for his sudden departure, and he is therefore named as a defendant. Lynn Russell resides in Oklahoma City, Oklahoma, and process can be issued by this Court and served upon him there. C. R. Haggard was then Manager of the Massey-Harris Memphis Branch and still is. He promptly joined the conspiracy, and has been and still is one of the most aggressive and vicious of the conspirators.

14. Massey-Harris Company, Limited, had theretofore marketed its products, through its own branches, direct to dealers, and the desire was irresistible to place distribution of Ferguson products with those branches, and thereby eliminate distributors' legitimate profits.

15. Further conspiring, and furthering the combination and conspiracy then existing as alleged in Paragraphs 12 and 13 above, the defendants, their predecessors, officers, agents and representatives (including branch personnel and franchised dealers), following the actions alleged in Paragraphs 12 and 13—

(a) Wired plaintiffs announcing the amalgamation and stating that they would be continued as distributors under present franchises, and mailed plaintiffs copies of letter and radio news release stating that the two organizations were complementary rather than competitive, and that plans for the future included continued sale and distribution of the new company's products by two distinct dealer contracts or franchises—one covering Massey-Harris tractors, combines and equipment, and the other covering Ferguson System tractors and Ferguson related equipment. That correspondence recommended the cross-franchising of Fer-

guson dealers and Massey-Harris dealers wherever practicable.

(b) Took prompt steps to eliminate certain Ferguson distributors by forcing them to sell out to defendants at cost, and promptly sent representatives to Memphis for conferences with plaintiffs' officials. Defendants' representatives indicated that plaintiffs would be continued as franchised distributors, and recommended that plaintiffs' dealers be also franchised as Massey-Harris dealers, in order that the dealer could carry both lines, and reassured plaintiffs that the lines were to be complementary and not competitive, and that the Ferguson System products would continue to be distributed through the plaintiffs, and requested plaintiffs to cooperate in cross-franchising dealers. At that time the tractors, farm implements and equipment which had up to then been manufactured by Massey-Harris Company, Limited, were not competitive with the Ferguson System tractors, farm implements and equipment manufactured by Harry Ferguson, Inc. The Ferguson System tractors and related implements contained patented features which could not be duplicated or sold or used without infringement and which were not embodied in any tractors or farm implements or equipment then manufactured by Massey-Harris Company, Limited.

Faced with the claimed right of cancellation, and relying implicitly upon the assurances repeatedly made that the lines would be complementary and not competitive, and that Ferguson System products would continue to be distributed through the plaintiffs, plaintiffs agreed to the proposed cross-franchising of dealers, and cooperated in inducing plaintiffs' dealers to enter into franchises with the defendants' branches then handling the line then being manufactured by Massey-Harris Company, Limited, and marketed through those branches. Many of plaintiffs' dealers were reluctant to take on the additional line, whereupon representatives of the defendants, acting in utter

disregard and in violation of the repeated assurances given plaintiffs, and for the purpose of coercing recalcitrant dealers, commenced circulating reports throughout the trade territories of plaintiffs, that all distribution and sale of Ferguson products would soon be taken over by the established Massey-Harris branches, and that eventually there would be no Ferguson line. Within a reasonably short time the defendants had succeeded in cross-franchising almost all of plaintiffs' largest and best dealers, which dealers handled the major portion of plaintiffs' total volume of Ferguson business. The same methods are still being pursued with the view to coercing the remainder of plaintiffs' desirable dealers to submit to cross-franchising, or give up the franchise for the Ferguson line and take a Massey-Harris franchise. A dealer with a Massey-Harris franchise can now obtain the famous Ferguson System tractors and substantially all Ferguson implements painted red, and bearing the name Massey-Harris instead of Ferguson.

(c) The defendants were then manufacturing and marketing a combine, and shortly after the merger the defendants advised plaintiff, Southland Tractors, Inc., that it would have to discontinue the distribution and sale of the Gleaner Combine. Fearing the claimed right and threat of cancellation of its Ferguson franchise, Southland Tractors, Inc., discontinued buying Gleaner Combines, and then and there sacrificed a large and substantial portion of its profitable business. This plaintiff's dealers who were not franchised to handle the Massey-Harris line suffered greatly because this plaintiff had no combine to offer them, and later, in an effort to relieve that intolerable condition, Southland Tractors, Inc., took preliminary steps and entered negotiations with the manufacturer of the Cockshutt Combine, for the distribution of its combine. While those negotiations were in progress the defendants repeatedly made direct and indirect threats to cancel this plaintiff's

Ferguson franchise if it should take on the Cockshutt Combine. All of this plaintiff's business in combines had been in interstate commerce and all its business in combines since the merger would have been in interstate commerce. Many of these threats were communicated to plaintiffs' dealers.

(d) After both plaintiffs had induced substantially all of their large dealers to take on the Massey-Harris line, defendants boldly and brazenly announced that the lines would be competitive, offered the dual or cross-franchised dealers better terms, credit and finance facilities on Massey-Harris products, and brought economic pressure to bear against those dealers to stock and promote Massey-Harris products.

(e) Caused, by exertion of sales pressure, plaintiffs and their dealers to continue to buy Ferguson tractors and implements, and at a time when plaintiffs and their dealers were carrying large inventories, commenced manufacturing the Ferguson TO-35 Tractor, with slight changes, retaining all of the distinctive, advanced and exclusive features of the Ferguson System, painted it red, and labeled it as a Massey-Harris production, and extravagantly advertised it nationally as the Massey-Harris "Miracle." The defendants promptly stocked this tractor in their branches, and a line of duplicated Ferguson System implements, promoted it to dealers and farmers, brought economic pressure to bear on plaintiffs' cross-franchised dealers to stock it and promote it, insisted that dealers give firm orders for a minimum number of the new tractor, which defendants named MH-50, and pushed it in competition with plaintiffs' dealers who did not hold Massey-Harris franchises. Defendants have thereby so impaired plaintiffs' and their dealers' ability to compete that they can no longer operate at a profit. Most dealers have since operated their Ferguson businesses at a loss; some have given

up, and others are liquidating with a view to getting out with the least possible loss.

(f) Refused to furnish plaintiffs and their dealers with sufficient implements to afford them a full line with which to compete, while furnishing the branches with a line of duplicated Ferguson implements, labeled and to be sold as Massey-Harris products.

(g) On new implements introduced by the defendants not three-point mounted, which are distributed through the branches, and offered to the Ferguson distributors for distribution, the defendants offer Massey-Harris dealers, including combination dealers, far more liberal credit terms than are made available by the defendants to the plaintiffs and their dealers in connection with the distribution of these implements, thus making it impossible for plaintiffs to distribute such implements in competition with the Massey-Harris branches.

(h) When plaintiffs complained to defendants that defendants' activities and practices if continued would cause plaintiffs to lose their business with combination dealers, the defendants took the position that plaintiffs would have to rebuild their dealer organization to replace their cross-franchised dealers lost to the branches.

Defendants have, by the acts herein enumerated and others, substantially eliminated the marketing of Ferguson products, and monopolized the entire market for both lines.

16. Harry Ferguson, Inc., in 1953, encouraged and induced Southland Tractors, Inc., and other , to take on the distributorship in Oklahoma City, Oklahoma, and to invest $200,000.00 in the venture, as a result of which Farm Tractors, Inc., was organized, a lease with high rentals executed, and a large amount of money invested in inventory, tools and equipment, service department and in the field to develop dealer representation. Plaintiffs entered

upon this venture, relying upon the false assurance of Harry Ferguson, Inc., that marketing and manufacturing of Ferguson products would continue as before, while the negotiations being conducted with respect to the then contemplated acquisition of Harry Ferguson, Inc., by Massey-Harris Company, Limited, were secretly withheld from the plaintiffs. Almost immediately Farm Tractors, Inc., was confronted with all the problems and activities set forth above, and other unfair, deceptive and restraining competitive practices, as a result of which Farm Tractors, Inc., was never able to effectively conduct its business so as to realize the earnings and profits to which it was entitled, and which defendants or their predecessor represented would be made and earned.

17. Prior to the amalgamation Harry Ferguson, Inc., had not manufactured and put on the market a tractor larger than the TO-35, which was in size what is commonly known as a two-plow tractor. However, prior to the amalgamation Harry Ferguson had designed and built a larger tractor embodying the distinctive advanced and patented Ferguson System features, comparable in size to what is commonly known as the four-row tractor. The future advent of that tractor and a line of related implements with the patented Ferguson features had been highly publicized and all Ferguson distributors and dealers had been advised to increase their capital and operating facilities, and urged to take firm orders for the new tractor. Hundreds and probably thousands of firm orders were executed and delivered. The defendants had not been able to build a tractor which could have met the competition of the new large Ferguson System tractor, and they well knew that their existing line of tractors of comparable size and capacity could not compete with it, and that their implements could not compete with those to be provided for the new tractor. Having acquired all Ferguson patents and rights to manufacture Ferguson System tractors and implements, the

defendants shelved that tractor and line of implements, and have never permitted them to be marketed, solely to restrain and suppress competition, and to enable them to dispose of and to foist upon the farmer four-row tractors now being manufactured by them, which are far inferior in quality, efficiency, performance, and economy to the promised new Ferguson tractor; or, they are purposely delaying the production of the new Ferguson System tractor and related implements until they can absorb the Ferguson System line into the Massey-Harris line, and thereafter market all products under the Massey-Harris name. Shortly after the merger distributors and dealers were falsely assured that tooling had been started, and before and since that time defendants have periodically given false assurances to plaintiffs and their dealers that deliveries would soon be made of the said tractor and implements. These false representations and assurances caused the plaintiffs and their dealers to expect substantial increases in their businesses, and were a controlling and compelling factor in inducing the plaintiffs to take on the franchise for the Oklahoma City Territory, investing their money in it, and developing a dealer organization. If the large Ferguson System tractor and related implements are ever produced, the defendants will market them under the colors and name of Massey-Harris through their branches, in direct competition to Ferguson distributors, with resultant damage to plaintiffs and their dealers, and ultimately as the exclusive Massey-Harris products.

18. Following the agreement to acquire the capital stock of Harry Ferguson, Inc., by Massey-Harris Company, Limited, in 1953, the defendant Massey-Harris-Ferguson, Limited, carried on a part or all of its business in the United States through Harry Ferguson, Inc., and the Massey-Harris Company (both of Racine, Wisconsin), as wholly owned subsidiaries. About September 1, 1954, those two subsidiaries were merged into the present Massey-Harris-

Ferguson, Inc., one of the defendants named herein. This latter company is a wholly owned subsidiary of Massey-Harris-Ferguson, Limited. Each of the defendants has assumed responsibility for all of the acts and liabilities of the other companies, and of their officers and agents.

19. Farm tractors and implements are vital to American agriculture. Any restraint on competition in any part of the industry prejudicially affects the public interest. The defendants' businesses of manufacturing and marketing farm equipment, machinery and implements is interstate commerce. Substantially all manufactured products are shipped in interstate commerce from the factories to every State in the Union. Plaintiffs' businesses are substantially all in interstate commerce; all products handled by them are shipped from other States and Canada to plaintiffs in Memphis and Oklahoma City, and to their dealers in the States in their trade territories.

20. The acts of the defendants and their predecessors herein complained of have unreasonably restrained and are unreasonably restraining competition in interstate commerce, and are in violation of 15 U. S. C. A. Section 1.

21. The monopoly herein complained of violates 15 U. S. C. A. Section 2.

22. A substantial part of the defendants' products have been and are imported by them from foreign countries into the United States, with the intent that such goods shall be sold in restraint of trade and competition in interstate commerce, in violation of 15 U. S. C. A. Section 8.

23. The defendants and their predecessors have, during the period from June, 1953, to date, continuously committed acts prohibited by 15 U. S. C. A. Section 13 (3).

24. The defendants and their predecessors have continuously violated the prohibitions of 15 U. S. C. A. Section 14, by restraining plaintiffs from handling and dealing in farm machinery, equipment and implements, manufactured and sold by defendants' competitors, while withholding from plaintiffs defendants' comparable products and merchandising the same through their branches.

25. The defendants have by their acts complained of in Paragraphs 12 through 18, violated the prohibitions enacted in 15 U. S. C. A. Section 18.

26. The defendants and their predecessors have, continuously since August, 1953, by the activities herein alleged, and especially those alleged in Paragraphs 15 through 17, violated the provisions of 15 U. S. C. A. Section 45(a).

27. The business of plaintiff, Southland Tractors, Inc., was well-established and growing. It has sustained and will sustain losses and damages occasioned by the unlawful acts of the defendants, their predecessors, officers and agents, in excess of $2,500,000.00. In addition thereto, this plaintiff is entitled to and claims an allowance for costs and expenses of suit and reasonable attorney fees, to be allowed by this Court pursuant to 15 U. S. C. A. Section 15.

28. The business of plaintiff Farm Tractors, Inc., was well-established, and but for the unlawful practices of the defendants its potential was greater than that of Southland Tractors, Inc. Its business has now been totally destroyed. The unlawful activities of the defendants have caused this plaintiff to operate at a loss for the past several months, and have made it impossible for this plaintiff to continue in business. Within the past sixty (60) days this plaintiff received a firm offer for the purchase of all of its physical assets at fair cash market value, the purchaser to assume a burdensome lease. The offer was conditioned only upon the

approval and consent of Massey-Harris-Ferguson, Inc. That defendant refused to give its consent and the sale was not consummated. Massey-Harris-Ferguson, Inc., has since agreed to purchase certain of the physical assets, but has refused to buy the furniture, fixtures, bins, and other inventory, equipment and assets, and has refused to assume the lease. It has sustained past, present and future losses and damages occasioned by the unlawful acts of the defendants, their predecessors, officers and agents in excess of $3,150,000.00. This plaintiff will suffer an additional loss in the liquidation of its remaining assets and by reason of its burdensome lease. In addition thereto, this plaintiff is entitled to and claims an allowance for costs and expenses of suit and reasonable attorneys fees, to be allowed by this Court pursuant to 15 U. S. C. A. Section 15.

29. (a) The continued marketing of the Ferguson TO-35 tractor and Ferguson implements and parts under the Massey-Harris trade name and color will soon destroy Southland Tractors, Inc., and its dealers, as well as Farm Tractors, Inc., dealers in the Oklahoma and Texas territory; and the marketing of the new four-row Ferguson tractor and related implements as a Massey-Harris product will deprive all those named herein just and equitable profits to which they will be entitled; and all this will cause those described in this paragraph irreparable injury and damage unless restrained and enjoined by decree of this Court.

(b) Continued threats by the defendants to cancel the franchises of Southland Tractors, Inc., and its dealers if they buy and sell farm implements, machinery and equipment not manufactured by defendants will cause this plaintiff and its dealers irreparable injury and damage unless restrained and enjoined by decree of this Court.

(c) All of the activities described in subparagraphs (a) and (b) will deprive Farm Tractors, Inc., dealers of just

and equitable profits and will cause them irreparable damage, unless those activities be enjoined by decree of this Court.

WHEREFORE, plaintiff Southland Tractors, Inc., demands judgment against the defendants for the amounts above claimed, and Farm Tractors, Inc., demands judgment against the defendants for the amounts above claimed, and that the damages awarded to each be trebled. Southland Tractors, Inc., prays for injunctive relief prohibiting the unlawful activities set forth in Paragraph 29(a) and (b), and that defendants be enjoined from cancelling its franchise or the franchises of its dealers, or those of Farm Tractors, Inc.

Plaintiffs demand a jury to try the issues when joined.

WILLIAM A. PERCY
Attorney at Law
Columbian Mutual Tower
Memphis, Tennessee

LOWELL W. TAYLOR
Attorney at Law
Commerce Title Building
Memphis, Tennessee
Attorneys for Plaintiffs.

Complaint.

COUNT II.

1. Jurisdiction is founded on diversity of citizenship and amount.

2. Each and every allegation in Paragraphs 2 through 18, and 27 and 28, are re-alleged and incorporated herein by reference.

WHEREFORE, plaintiff Southland Tractors, Inc., demands judgments against the defendants for the amounts of compensatory damages claimed in Paragraph 27, and for punitive damages in twice those amounts, and Farm Tractors, Inc., demands judgment against the defendants for the amount of compensatory damages claimed in Paragraph 28, and for punitive damages in twice that amount.

Plaintiffs demand a jury to try the issues when joined.

WILLIAM A. PERCY
Attorney at Law
Columbian Mutual Tower
Memphis, Tennessee

LOWELL W. TAYLOR
Attorney at Law
Commerce Title Building
Memphis, Tennessee
Attorneys for Plaintiffs.

Motion to Quash Returns and Purported Service of Summons and Complaint and to Dismiss Complaint.

Comes the defendant Massey-Harris-Ferguson Limited, appearing specially for the purpose of making this motion and for no other purpose, and moves the court upon the summons and complaint herein and the annexed affidavits of Lee J. Wolf, C. Norman Appleton, V. N. Detling and Kenneth G. House for an order quashing the purported service, and the various returns thereof of a summons and complaint in this cause upon this defendant, Massey-Harris-Ferguson Limited, and dismissing the complaint as to this defendant upon the grounds that this defendant, at the time of institution of this suit and at all times since, was and is a corporation chartered under the laws of the Dominion of Canada; it was not and is not an inhabitant of the Western District of Tennessee; it was not and is not transacting business in the Western District of Tennessee; and it was not and is not either actually or legally present or found in the Western District of Tennessee and accordingly it is not subject to suit in the Western District of Tennessee nor to service of process in this cause.

s/Cooper Turner, Jr.
Attorney for Defendant

Affidavit of Lee J. Wolf in Support of Motion to Quash and Vacate Service.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

SOUTHLAND TRACTORS, INC. and FARM TRACTORS, INC.,
Plaintiffs,

v.

MASSEY-HARRIS-FERGUSON, INC., MASSEY-HARRIS-FERGUSON, LIMITED, and LYNN RUSSELL,
Defendants.

STATE OF WISCONSIN }
COUNTY OF RACINE } ss.:

LEE J. WOLF, being duly sworn, deposes and says:

1. I am the Vice President, Administration, and Treasurer of Massey-Harris-Ferguson, Inc. (herein sometimes called "the American Company") and am fully familiar with the business and operations of this company. I make this affidavit in support of the motion of Massey-Harris-Ferguson, Limited (herein sometimes called "the Canadian Company") to vacate the service of the summons and to dismiss the complaint herein on the grounds that the Canadian Company is not subject to process in the Western District of Tennessee.

2. The American Company is a Maryland corporation which commenced operations on February 22, 1928 under

Affidavit of Lee J. Wolf in Support of Motion to Quash and Vacate Service.

the name of The Massey-Harris Company. Its name was changed to Massey-Harris-Ferguson Inc. in 1954. It is qualified to do business in every state of the United States including the state of Tennessee and is therefore subject to process here.

3. The American Company has been at all times a wholly owned subsidiary of the Canadian Company, but it has been independently operated at all times since its organization. Its business and operations are conducted by a Board of Directors and Officers, a majority of whom are residents of the United States. Its main offices are located at Racine, Wisconsin from which point the activities of the company's five manufacturing plants are directed. The company operates two plants at Racine, Wisconsin for the manufacture of tractors, cultivators, planters, bedders and listers. The company also operates a plant at Batavia, New York for the manufacture of combines, corn pickers, harvesters and forage blowers. It maintains another plant at Fowler, California for the manufacture of harrows, cultivators and listers and a tractor assembly plant at Detroit, Michigan. In addition to its manufacturing and assembly operations carried on at these five plants, the American Company purchases from independent suppliers and manufacturers throughout the United States.

4. The American Company also maintains a national distribution organization. Its products are distributed in the United States through 19 branches having 2,253 franchised dealers. In addition, the company presently has agreements with 18 independent distributors having 1,874 franchised dealers. The Canadian Company has no agreements or relationships with these branches, distributors, or dealers. The plaintiff corporations were distributors for Harry Ferguson, Inc. In 1953, following the merger of the Massey-Harris and Ferguson companies, the plain-

tiff corporations became distributors for the American Company. A copy of each of the agreements with the plaintiff corporations is annexed hereto as Exhibits "A" and "B".

5. Pursuant to the terms of these Agreements, the plaintiffs from time to time have placed orders for tractors and farm implements with the American Company. These orders have been accepted or rejected by the American Company at the main offices in Racine, Wisconsin. At the direction of the company's offices in Racine, shipments of tractors and farm implements have been made from time to time to the plaintiff corporations.

6. On information and belief the plaintiffs have never placed orders with the Canadian Company and the Canadian Company has made no sales to the plaintiffs. All of plaintiffs' business relations are and have been with the American Company.

7. The American Company has never acted as the agent for the Canadian Company. It has at all times acted solely in its own name and for its own account in all of its manufacturing, assembly, sales, procurement and advertising activities.

/s/ LEE J. WOLF

Sworn to before me this 4th
day of September, 1956.

/s/ MYRTLE M. CHECKLA
Notary Public

Notary Public, Racine County, Wisconsin
My Commission Expires April 13, 1958

(SEAL)

Affidavit of C. Norman Appleton in Support of Motion to Quash and Vacate Service.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

SOUTHLAND TRACTORS, INC. and FARM TRACTORS, INC.,
Plaintiffs,

v.

MASSEY-HARRIS-FERGUSON, INC., MASSEY-HARRIS-FERGUSON, LIMITED, and LYNN RUSSELL,
Defendants.

DOMINION OF CANADA }
PROVINCE OF ONTARIO } ss.:

C. NORMAN APPLETON, being duly sworn, deposes and says:

1. I am a resident and citizen of Canada and I am the Vice-President and Secretary of Massey-Harris-Ferguson Limited (herein sometimes called the "Canadian Company") and am familiar with its business and operations. I am advised that on August 21, 1956 the summons and complaint in this action purportedly were served in Memphis, Tennessee upon V. N. Detling who is not an employee of Massey-Harris-Ferguson Limited but who is an employee of the American subsidiary, Massey-Harris-Ferguson Inc. (herein sometimes called the "American Company"). I am advised that on August 24, 1956 service was made in New York City of the said summons and complaint on

Affidavit of C. Norman Appleton in Support of Motion to Quash and Vacate Service.

Kenneth G. House, accountant of the New York Agency of The Canadian Bank of Commerce. I am advised that thereafter on August 27, 1956 service was made in Detroit, Michigan, upon Herman Klemm, who is an officer of both corporate Defendants herein.

2. The complaint herein refers to Massey-Harris-Ferguson Limited as a corporation organized and existing under the laws of the United Kingdom of Great Britain. This is incorrect. Massey-Harris-Ferguson Limited is a Canadian corporation. The Canadian Company of which I am an officer owns all of the stock of the American Company and is the parent corporation thereof.

3. I make this affidavit in support of the motion of the Canadian Company to vacate the service of the said summons as against it on the grounds that the Canadian Company has not done and is not now doing business in the Western District of Tennessee and is therefore not subject to process in that District. On the basis of my experience with the Canadian Company which extends over a period of many years and after consulting available records and personnel, to the best of my knowledge and belief this is so because:

(a) the Canadian Company was never and is not now a resident of the Western District of Tennessee;

(b) the Canadian Company was not and is not now qualified to do business in the State of Tennessee;

(c) the Canadian Company has never maintained any office or place of business, or kept any books or records in the Western District of Tennessee;

(d) the Canadian Company has never held meetings of its board of directors or stockholders in the

Affidavit of C. Norman Appleton in Support of Motion to Quash and Vacate Service.

Western District of Tennessee and none of its officers or directors are residents there;

(e) the Canadian Company has never maintained any bank accounts in the Western District of Tennessee;

(f) the Canadian Company has never authorized or paid for any listing in any directories published in the Western District of Tennessee;

(g) the Canadian Company has never done any advertising in any media published in the Western District of Tennessee;

(h) the Canadian Company has never solicited any orders or made any sales in the Western District of Tennessee nor has it made any collections of any accounts there;

(i) the Canadian Company has never appointed anyone as its agent in the Western District of Tennessee for any purpose whatsoever.

4. The Canadian Company was incorporated in Canada by letters patent dated July 2, 1891 and has operated continuously in Canada since that date. Its business is conducted by a board of directors and officers a majority of whom are residents of Canada.

5. The Canadian Company is a manufacturer and supplier of tractors, farm implements and related equipment. The main offices of the Canadian Company and its corporate books and records are located in Toronto, Ontario. It owns and operates five plants in Canada where tractors, combines, hay balers, cultivators, discs, drills, mowers, rakes, loaders, manure spreaders, harrows, plows and other farm implements are manufactured.

Affidavit of C. Norman Appleton in Support of Motion to Quash and Vacate Service.

6. The Canadian Company has operating and manufacturing subsidiaries in the United States and in various other countries. Each of such subsidiary companies has been and is operated and managed through its own board of directors and officers.

7. The Canadian Company distributes its products in Canada through branches. None of the activities of the Canadian Company, including manufacturing, assembly, sales or advertising, are carried on in the Western District of Tennessee. The Canadian Company has never made any sales to the Plaintiffs herein. None of the Canadian Company's records, books of account or bank accounts have been or are located in and no personnel of the Canadian Company has been or is resident in the Western District of Tennessee. The Canadian Company has no franchises or agreements with distributors or dealers for the sale or distribution of its products in the United States and, specifically, no franchises or agreements with the Plaintiffs herein. The American Company does not act as agent of the Canadian Company.

C. N. APPLETON

Sworn before me at the City of Toronto
in the Province of Ontario this
6th day of September, 1956.

J. THOMPSON
A Notary Public
in and for the Province of Ontario
My Commission is for life

Notarial Seal

Affidavit of V. N. Detling in Support of Motion to Quash and Vacate Service.

STATE OF TENNESSEE }
COUNTY OF SHELBY } ss.:

V. N. DETLING, being duly sworn, deposes and says:

1. I am the Assistant Branch Manager of the Memphis branch of Massey-Harris-Ferguson, Inc. My authority and duties are to assist the Branch Manager in the conduct of the affairs of the Memphis branch of that company, which branch has general supervision of the sales of the company's equipment in the Southeast area of the United States.

2. I am not and never have been an officer, agent or employee of Massey-Harris-Ferguson Limited and I am not an Assistant Branch Manager of that company as stated in the return of John T. Williams, U. S. Marshal.

3. On the 21st of August, 1956, I received a summons and complaint in this action from a Deputy United States Marshal. I did not accept service of these documents on behalf of Massey-Harris-Ferguson Limited nor did I state that I so received service of the documents.

4. I am fully familiar with all of the business operations of Massey-Harris-Ferguson, Inc. in Tennessee, and the activities of other farm machinery companies in the area. Massey-Harris-Ferguson Limited does not have an office in Tennessee, nor has it at any time had an agent or representative in that State, nor has it transacted business of any kind in that State.

V. N. DETLING

Sworn to before me this 7 }
day of September, 1956. }

M. K. MARCHILDON
Notary Public

My Commission Expires June 22-1960

Affidavit of Kenneth G. House in Support of Motion to Quash and Vacate Service.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

KENNETH G. HOUSE, being duly sworn, deposes and says:

1. I am an Accountant of the New York Agency of The Canadian Bank of Commerce, 20 Exchange Place, New York, New York.

2. On August 24, 1956, purported service of a summons and complaint in the above entitled action was made on me.

3. Neither I nor the New York Agency of The Canadian Bank of Commerce has at any time been appointed or acted as the agent for service of process or any other purpose for Massey-Harris-Ferguson Limited. I was not authorized to receive service of process on said corporation.

4. Massey-Harris-Ferguson Limited has maintained for some years a current bank account with the New York Agency of The Canadian Bank of Commerce, and we have from time to time honored drawings against this account. In addition, The Canadian Bank of Commerce Trust Company, an affiliate of The Canadian Bank of Commerce, has acted as transfer agent with respect to the stock of Massey-Harris-Ferguson Limited. This is and has been our only relationship with Massey-Harris-Ferguson Limited.

5. I am not, and was not on August 24, 1956, an officer of The Canadian Bank of Commerce Trust Company.

/s/ KENNETH G. HOUSE

Sworn to before me this 6th day of September, 1956.

/s/ FRANK J. MURPHY
Notary Public

FRANK J. MURPHY
Notary Public, State of New York
No. 31-8068900
Qualified in New York County
Commission Expires March 30, 1958

[SEAL]

SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 11 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM—1957.

No. 218

MASSEY-HARRIS-FERGUSON LIMITED,
Petitioner,

against

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,
Respondent.

REPLY BRIEF OF PETITIONER, MASSEY-HARRIS-FERGUSON LIMITED, IN FURTHER SUPPORT OF ITS PETITION FOR CERTIORARI AND MOTION FOR LEAVE TO FILE A PETITION FOR MANDAMUS OR OTHER APPROPRIATE WRIT.

JOHN F. SONNETT,
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New York 5, N. Y.
Counsel for Petitioner,
Massey-Harris-Ferguson, Ltd.

Of Counsel:

WILLIAM MERCER ALEXANDER,
COOPER TURNER, JR.,
KENNETH D. WALLACE,
THOMAS R. PRICE.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1957.

No. 218

MASSEY-HARRIS-FERGUSON LIMITED,

Petitioner,

vs.

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

Respondent.

REPLY BRIEF OF PETITIONER, MASSEY-HARRIS-FERGUSON LIMITED, IN FURTHER SUPPORT OF ITS PETITION FOR CERTIORARI AND MOTION FOR LEAVE TO FILE A PETITION FOR MANDAMUS OR OTHER APPROPRIATE WRIT.

The District Court in Tennessee ruled that petitioner Canadian corporation, which does no business in the United States, is subject to its jurisdiction and to the antitrust laws of the United States simply by service in Tennessee on its wholly-owned American subsidiary, which it admittedly controls.

The issue before this Court is whether the decision permitting the antitrust laws to have this extra-territorial effect is to be corrected at this time under the All-Writs statute or whether petitioner must defend itself and face the dilemma of violating either the laws of its home country or of not complying with the federal rules, only at some

later date possibly to have an appellate court rule that it actually was not subject to suit.

Respondent deals with the district court's ruling, which the Court of Appeals said was "doubtful both as a matter of fact and in point of law," only with a passing, one page reference (p. 32) and then proceeds to devote the bulk of its brief to showing that petitioner controls its wholly-owned American subsidiary.

Petitioner concedes, in the words of the District Court, that it exercises the "control and dominion" inherent in its complete stock ownership and, indeed, would be delinquent and guilty of mismanagement if it did not. This control, however, could not possibly lead even to a suggestion that the corporate forms between the Canadian and American companies were not real but were pure fiction, tantamount to fraud, within the dictum of *Cannon Manufacturing Company* v. *Cudahy Packing Co.*, 267 U. S. 333. The lower court made no finding and respondent has made no argument or showing that the corporate forms were not real.

The narrow issue is simply whether service on an American subsidiary can bring a Canadian parent corporation before the court to face charges under the antitrust laws solely because it exercises its lawfully given powers and obligations of "control and dominion" through stock ownership over an American company.

I.

This case has a serious impact on international commercial relations.

Respondent makes light of this case's effect on this country's foreign and domestic commerce and on international commercial relations, referring to it as a "heretofore

unknown ground for certiorari". Certainly this Court has always considered the practical importance of questions presented to it in determining whether certiorari should issue. And if a decision has an important and adverse effect on international commercial relations, its practical importance necessarily is great.

Further evidence of the importance of considering the petition and of reversing the District Court decision in the instant case because of the impact of the "Business Records Protection Act" of The Province of Ontario, Canada is to be found in a recent report by an eminent committee of the Association of the Bar of the City of New York. The Special Committee on Antitrust Laws and Foreign Trade issued on May 29, 1957 a preliminary report entitled "National Security and Foreign Policy in the Application of American Antitrust Laws to Commerce with Foreign Nations". In the course of this report the Committee expressed great concern over the impact of our antitrust laws and their enforcement on our relations with other nations.

The Report states:

> "There are many instances of resentment expressed by foreign governments over our efforts to enforce our antitrust laws extraterritorially, a resentment that has more than once been expressed in legislation designed to impede if not frustrate our efforts. That resentment is not hard to understand; it has many roots." (p. 7)
>
> "When we violate the law of nations by asserting jurisdiction to enforce our antitrust laws against citizens of other nations we create substantial skepticism as to our good faith in insisting that those nations adhere to fundamentals of international law in other respects. We also cause speculation as to whether we would be willing to have our citizens

subjected to corresponding laws of other nations. As a British court stated:

> "I conceive that the American Courts would . . . be slow (to say the least) to recognize an assertion on the part of the British Courts of jurisdiction extending (in effect) to the business affairs of persons and corporations in the United States." *British Nylon Spinners* v. *I. C. I.*, [1953] 1 Ch. 19.

. . . . . .

"A striking example of resentment at our efforts to push antitrust extraterritorially is found in the efforts of the Department of Justice to investigate the Canadian newsprint industry in 1947. Grand jury subpoenas were served upon Canadian newsprint companies. This prompted the Canadian Embassy in Washington to seek the aid of the Department of State to prevent 'any undesirable interference' with these companies. The Secretary of State sought the views of the Attorney General and was advised that this proceeding was not 'in any manner inconsistent with our foreign policy.' The Canadian companies persisted in their refusal to honor the American grand-jury subpoenas and, when contempt proceedings were contemplated, the Secretary of State reported to the Attorney General that 'The investigation has aroused very considerable resentment and hostility in Canada, which is greatly to be regretted.'

. . . . . .

"The Province of Ontario responded by passing the Business Records Act which bars production of certain business records for use in foreign courts. It is cited as legislation passed to protect members of the Canadian newsprint industry in that Province against antitrust investigation by American process.

. . . . . .

"A similar law has been passed in the Netherlands, a country which in 1952 formally protested to our Department of State against efforts of our government to compel Dutch subsidiaries of American parents to send documents out of the country in response to the demand of process of an American court. Removal of documents was forbidden. So, too, was removal of documents of British corporations forbidden by order of the British Government in connection with the same investigation and at about the same time.

"The Swiss Government reacted sharply to the recent proceedings against American and Swiss watch manufacturers. Formal protests were lodged through diplomatic channels both here and in Switzerland (pp. 12, 13, 14).

"The conclusion we draw from the foregoing review is that antitrust has often affected foreign relations or national security in important instances" (p. 18).

The conclusions of this study provide new evidence of the significant impact of the erroneous decision of the District Court in this case in assuming jurisdiction and the widespread concern in the judiciary and bar, in the business world and by foreign governments caused by arbitrary action of this kind.

The importance of a grant of certiorari or an extraordinary writ to correct this clearly erroneous assumption of jurisdiction could not be more incontrovertible.*

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* Respondent's contention that this Court cannot consider the Canadian statute because it presents a "question of fact" is obviously without merit. This Court is not to be blindfolded or asked to ignore the impact of statutes of Canada, written in clear English language.

The Canadian law was not relevant before the District Court on the question of whether petitioner was found in Tennessee and there was no reason to plead or prove it in connection with that motion. On the petition for mandamus, however, it was important

II.

Respondent's attempt to distinguish the case of *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U. S. 333, is unsound.

Respondent Misinterprets the Language of the *Cudahy* Opinion.

Respondent recognizes (pp. 31-32) the authority of the *Cudahy* case and attempts to distinguish it by a clearly fallacious interpretation of a sentence plucked from the opinion in that case. In that case, Justice Brandeis distinguished cases dealing only with substantive rights arising out of the parent-subsidiary relationship, holding that they had no application in resolving the entirely different question of the effectiveness of service with respect to a parent corporation. The respondent tries to construe his statement distinguishing these cases as creating a special rule of service for situations where the plaintiff is attempting to obtain jurisdiction over the parent by service on a subsidiary, especally where there is an allegation of a conspiracy between the parent and its subsidiary.

---

to show the Court of Appeals the way in which the decision below infringed upon the law of Canada and the manner in which the petitioner was placed in jeopardy under those laws. These were considerations which should not have been ignored by the Court of Appeals in determining whether the extraordinary writ should issue.

The cases cited by the respondent for the proposition that foreign law must be pleaded and proved are cases where a claim or defense was based directly on foreign law. Where foreign law is merely used collaterally as a consideration bearing upon the argument or decision of some question of policy, it is no more necessary to prove it formally than it is to prove treatises or other similar materials. The law of Ontario and the policy of the Government of Ontario are therefore matters properly to be considered by the Court in this case.

That respondent's construction is plainly wrong is clear from an examination of the four cases which Justice Brandeis cites immediately following the sentence quoted and relied on by the respondent at page 32 of his brief.

Those cases cited by Mr. Justice Brandeis were concerned only with the parent-subsidiary relationship as it affected some substantive right, and none of them involved any question of service or jurisdiction with respect to the parent corporation or any other party.*

Respondent's Attempt to Avoid the Ruling of the *Cudahy* Case Is Not Supported by the Cases it Cites.

Respondent has buried a group of sixteen cases in a footnote on page 32 of its brief which it characterizes as an "unbroken line of decisions" supporting the principle that a special rule of service applies where there is an allegation in the complaint of conspiracy between the parent and its subsidiary.

This heretofore unheard of theory of jurisdiction was not the basis of the ruling of the District Court and, in fact, in cases brought under the antitrust laws the *Cudahy* case has been held to bar service on the parent without any

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* Thus, in *Hart Steel Co.* v. *Railroad Supply Co.*, 244 U. S. 294, it was held that a judgment in favor of a parent corporation was *res judicata* in an identical action against its subsidiary. In *Chicago M. & St. Paul Railway* v. *Minneapolis Civic & Commerce Corp.*, 247 U. S. 490, it was held that a subsidiary corporation was the instrumentality of its two parents so that an order of the State Railroad Commission denying the subsidiary the right to make an extra charge for its services was valid. In *Gulf Oil Corp.* v. *Lewellyn*, 248 U. S. 71, this Court held a transfer of certain inter-corporate debts from subsidiary corporations to their common parent did not constitute payment of dividends to the parent for tax purposes. Finally, in *United States* v. *Lehigh Valley RR.*, 254 U. S. 255, this Court held only that a subsidiary corporation was so controlled by its parent that a contract between them was not a contract between separate parties and was obnoxious to the antitrust laws.

consideration of the question whether the plaintiff had charged a conspiracy between parent and subsidiary. *E.g.*, *Terry Carpenter, Ltd.* v. *Ideal Cement Co.*, 117 F. Supp. 441 (D. Neb. 1954); *Lawlor* v. *National Screen Service Corp.*, 10 F. R. D. 123 (E. D. Pa. 1950).

None of the sixteen cases cited by respondent support the principle for which they are cited. Nearly all of them are not even remotely relevant to the question of effectiveness of service on a subsidiary to obtain jurisdiction over a parent which is involved in this case.

Three of the cases cited are the very decisions distinguished by Justice Brandeis in the *Cudahy* case. Most of the balance of the sixteen cases are like those distinguished by Justice Brandeis in that they deal with some question of substantive law which depends on the parent-subsidiary relationship. In this category are the four cases of *Detroit Motor Appliance Company* v. *General Motors Corp.*, 5 F. Supp. 27 (E. D. Ill. 1933); *Trustees System Co. of Pa.* v. *Payne*, 65 F. 2d 103 (3rd Cir. 1933); *Central Vermont Ry.* v. *Southern New England RR.*, 1 F. Supp. 1004 (D. Mass. 1932); and *Continental Oil Co.* v. *Jones*, 26 F. Supp. 694 (W. D. Okla. 1939).

Two of the cases, *United States* v. *Kissel*, 218 U. S. 601 (1910) and *United States* v. *General Motors Corporation*, 121 F. 2d 376 (7th Cir. 1941), are so completely irrelevant to any issue in this case that their being cited must be a mistake. In the *Kissel* case, the only question decided was that a conspiracy in violation of the antitrust laws may be continuous so that the statute of limitations does not run from the moment when the conspiracy was formed. The *General Motors* case held that where several affiliated corporations were charged with a conspiracy in violation of the antitrust laws they could not be considered a "single trader."

Although two of the remaining cases, *United Chromium Inc.* v. *General Motors Corp.*, 11 F. Supp. 694 (D. Conn. 1935) and *Ross-Bart Port Theater, Inc.* v. *Eagle Lion Films, Inc.*, 140 F. Supp. 401 (E. D. Va. 1954), considered the effectiveness of service of process, they have no present relevance.

In the *United Chromium* case, an infringement action, the parent, a patent holding corporation, admitted in its answer that its subsidiary's factory within the jurisdiction was a regular and established place of business for it. On the basis of this admission the Court held that the parent was a proper party and that proofs of infringement by the subsidiary might be taken as proofs of infringement against the parent. In the *Ross-Bart* case, the plaintiff brought an antitrust action in Virginia in 1953 alleging that the defendant, a foreign corporation, had engaged in a conspiracy in Virginia in 1948. Service was made on the defendant in the District of Columbia and in New York and the defendant conceded that it was found in those jurisdictions. It argued, however, that the service was improper because it did not transact business and was not a resident of Virginia when the action was commenced in 1953. The Court held that the defendant's admitted activities in Virginia in 1948 made the venue proper and justified out-of-state service under Section 12 of the Clayton Act. Thus the problem was one of venue and the question of whether the defendant was "found" in the jurisdiction for purposes of service was not involved.

Elimination of these twelve* clearly irrelevant cases leaves four district court cases in the "unbroken line of authority" cited in behalf of the respondent in the attempt

* The eleven which are discussed, plus *United States* v. *Scophony Corp.*, 333 U. S. 795 which is discussed and shown not to be applicable in the Petition at pp. 16 ff.

to avoid or distinguish the *Cudahy* case. The four remaining cases are a hopeless reserve.

In *Bator* v. *Boosey & Hawkes, Ltd.*, 80 F. Supp. 294 (S. D. N. Y. 1948), the defendant corporation had a managing director residing and working within the jurisdiction where the action was brought and carried on negotiations with respect to the contracts under which the suit arose. The defendant was not held to be subject to service merely because it had a subsidiary which was doing business within the jurisdiction.

Industrial Research Corporation v. *General Motors Corp.*, 29 F. 2d 623 (N. D. Ohio 1928) is the only case which lends any support to the respondent's interpretation of the *Cudahy* opinion. The decision in that case was recently criticized in *Bergholt* v. *Hudson Motor Car Co.*, 124 F. Supp. 716 (D. Minn. 1954), in which the District Judge stated in his opinion that "the unsoundness of the interpretation of the *Cudahy* case offered by the *General Motors* case, *supra* . . . is obvious from an examination of the Cudahy opinion" (p. 719). He went on to point out that the *Cudahy* case established the proposition that cases concerning substantive rights are not applicable to matters of procedure and that the language of the case showed that such cases are not in point in a controversy involving the effectiveness of service of process.

The final two cases in the "unbroken line" are *Pergament* v. *Frazer*, 93 F. Supp. 9 (E. D. Mich. 1949) and *Alexander Young Distilling Co.* v. *National Distillers Products Corp.*, 33 F. Supp. 334 (E. D. Pa. 1940). Both involved adequacy of service under the due process clause and are therefore not applicable in determining whether service meets the stricter requirements of Section 12 of the Clayton Act. Both of these cases also rely heavily on the *General*

Motors case discussed above, but without discussing its interpretation of *Cudahy*. Moreover, both cases are distinguishable from the instant case because in each the parent corporation was transacting business in the forum.

The *Pergament* and *Alexander Young* cases are thus based on an erroneous interpretation of the *Cudahy* opinion and in any event are not controlling in the instant case because of different factual situations.

The Authority of the *Cudahy* Case Is Unimpaired.

The only additional legal argument presented in behalf of respondent to support the District Court's decision is based upon the three cases cited on page 33 of its brief. These cases allegedly show that *International Shoe Company* v. *Washington*, 326 U. S. 310, has left little of the authority of the *Cudahy* case remaining. The respondent in citing these three cases completely ignores the many District Court and Court of Appeals cases cited on pages 15 and 16 of the petition for certiorari, all of which demonstrates that the authority of the *Cudahy* case has been left unimpaired by the *International Shoe* case and other recent Supreme Court decisions.

The three lower courts cited by respondent all involve situations in which the corporation sought to be made a party to the action was itself acting in the jurisdiction in its own behalf or through its own agents. Thus, in *Scholnik* v. *National Airlines Inc.*, 219 F. 2d 115 (6th Cir. 1955), the defendant's planes and crews were flying in the jurisdiction under an interchange agreement with another airline and the second airline was admittedly acting as defendant's agent to solicit business, sell tickets and advertise for the defendant within the jurisdiction. In *Consolidated Cos-*

metics v. *D-A Publishing Company, Inc.*, 186 F. 2d 906 (7th Cir. 1951), the magazines published by the defendant corporation were printed, addressed and deposited in the mail in the jurisdiction where the action was pending by a corporation under contract with the defendant. The defendant had designated a place within the jurisdiction as the office of publication for the purpose of postal regulations. Defendant forwarded all the material which was to be published in the magazine and the corporation which did the printing held in its possession various materials which remained the property of defendant. Under these circumstances the Court held that service on the defendant satisfied the requirements of due process.

Finally, in *Clover Leaf Freight Lines, Inc.* v. *Pacific Coast Wholesalers Association*, 166 F. 2d 626 (7th Cir. 1948), the defendant, a California corporation, was held to be doing business in Illinois because an Illinois corporation acted as its agent in receiving shipments consigned to the defendant and assembling them into carload lots for shipment to California. The Illinois corporation transacted a large and important part of the business of the defendant and the defendant's name appeared on a sign over the receiving facilities of the Illinois corporation. It was held that the requirements of due process were satisfied.

In none of these three cases was a corporation held amenable to service because of the activities of a subsidiary; in all of them the defendant sought to be served was acting directly within the jurisdiction through its authorized agents. Moreover, in each of these cases, the question was whether the requirements for due process had been satisfied; the stricter requirements of Section 12 of the Clayton Act were not involved. See Pet. for Cert., pp. 14-15.

The respondent's brief makes no effort to support either the reasoning of the District Court or its distinction of the *Cudahy* case on the ground that that case was a contract action and not an antitrust case.

Petitioner submits that the authority of the *Cudahy* case is unimpaired, that a parent corporation cannot be brought before a court merely by serving its subsidiary

III.

Respondent's discussion of the evidence before the District Judge does not support the ruling below.

Recognizing the weakness of its legal position on the jurisdictional question, the respondent has attempted to confuse and bury the issue by an extensive detailing of the material dealing with the ordinary and required control by the Canadian Company of its American subsidiary which was presented to the District Judge on the motion to quash service. Such a consideration of the evidence is unnecessary and inappropriate, and the presentation of the facts relating to this admitted control tends to obscure the narrow issue decided in the District Court.

The record should first be set clear by what the District Court actually found as fact—this was merely that the "American company operates wholly under the control and dominion of the Canadian company" (App. 11b).

The District Court did not find that the petitioner was acting directly in the United States apart from the activities of its wholly-owned subsidiary. The entire decision of the District Court was based upon this question of the control exercised by the Canadian parent over its American subsidiary.

Nearly all of the facts discussed in the respondent's brief were facts not even discussed by the District Court and not relevant on the theory upon which the District Court proceeded. Others of the facts discussed are merely details of evidence relating to control which were embodied in the opinion of the District Court and conceded to be true by the petitioner. None of this evidence is sufficient to support service on the petitioner.

Petitioner's Activities With Respect to the Business of Harry Ferguson, Inc.

Much of the evidence discussed by the respondent, including all of that presented at pages 13 to 18 of its brief, related to the alleged supervision and control by petitioner of the business of its wholly-owned subsidiary, Harry Ferguson, Inc., between August, 1953, and the merger of that corporation with petitioner's other wholly-owned American subsidiary, Massey-Harris Inc. in September, 1954, to form defendant Massey-Harris-Ferguson, Inc. Respondent's rather lengthy discussion is completely unrelated to the grounds on which the District Court based its decision and to the issues presented to this Court. Also, throughout the principal discussion respondent neglects to point out (until later in its brief (pp. 23-24)) that the same persons referred to were also officers not only of the Canadian company but also of Massey-Harris, Inc., leading to a finding of common officers between the two companies.

The remainder of the evidence described by the respondent adds nothing to the findings of fact which were made by the District Court. The court found that there were interlocking officers and directors as between the Canadian and the American companies, that the annual statements of the Canadian company referred to the American company as a division, that engineers on one occasion were sent to

Mississippi (not Tennessee as claimed) from Canada to run experimental field tests on farm machinery which was under development and that these employees were advanced expense money by the American company and that merchandise manufactured by the Canadian company of the value of $3,000,000 yearly was sold in the Tennessee-Mississippi-Arkansas area by the American company. The petitioner conceded the truth of these facts in its Petition, yet the respondent devotes many pages to a detailed summary of the evidence upon which those findings were based.

The respondent also details a number of instances in which persons whom it identifies as officers of the petitioner participated in discussions and other activities pertaining to business of the American company in the western district of Tennessee. It is not until later in its brief that the respondent in passing recognizes that all of these persons were officers of the American company when they performed these activities and were fulfilling their duties as corporate officers of the American Company.

Under the Rule of the *Cudahy* Case the Petitioner Was Not Doing Business in the Western District of Tennessee.

The District Court did not find and the facts discussed in respondent's brief do not show that the existence of the American company was a mere fiction tantamount to fraud nor that there was any greater control exercised by the petitioner over its subsidiary than was exercised by the parent corporation in the *Cudahy* case. As Justice Brandeis pointed out in that opinion, identity of interest between parent and subsidiary and control over the subsidiary by the parent has no legal significance (267 U. S. at 336-37).

That the corporate distinction or "form" between the two affiliated companies was assiduously maintained could not be better demonstrated than by the assertions of

respondent. The facts that the same persons held titles in both companies, that financial statements after independent audit were consolidated, and that the many more other distinctions relating to taxes, daily operations, etc., were maintained belie any charge that the corporate forms were a fiction.

Moreover, nearly all of the facts relied on by the respondent have been specifically rejected as irrelevant in one or more of the applicable cases in attempts to hold a parent corporation by service on a subsidiary.

As to consolidated financial statements, see:

Peterson v. *Chicago, Rock Island & Pacific Railway Co.*, 205 U. S. 364;

Harris v. *Deere & Company*, 223 F. 2nd 161 (4th Cir. 1955).

As to interlocking directorates and participation by the parent in policy decisions of the subsidiary, see, in addition to the *Cudahy* case:

Terry Carpenter, Ltd. v. *Ideal Cement Co.*, 117 F. Supp. 441 (D. Neb. 1954);

Nagl v. *Northam Warren Corp.*, 8 F. R. D. 130 (D. Neb. 1948).

As to the advancing of money or paying of salaries by the subsidiary for its parent, see:

Echeverry v. *Kellogg Switchboard & Supply Company*, 175 F. 2nd 900 (2d Cir. 1949).

As to the use of stationery by the subsidiary bearing the name of the parent, see:

Fergus Motors v. *Standard-Triumph Motor Company*, 130 F. Supp. 780 (S. D. N. Y. 1955);

Pfeiffer v. *United Booking Office*, 93 F. Supp. 363 (N. D. Ill. 1950).

As to the coordination of activities such as engineering, see:

Commonwealth Amusement Enterprises, Inc. v. *Colonial Theatres Co.*, 79 F. Supp. 763 (D. Mass. 1937).

Finally, petitioner points out that it has never sold any farm machinery or in any other way transacted business in the United States.

Any of the farm equipment manufactured by petitioner which was sold anywhere in the United States was purchased by the American Company, title passed to that company in Canada, and at all times the American subsidiary had title, control and direction over the equipment until it sold the equipment to, among others, distributors such as plaintiffs.

Even if the facts were otherwise, the irrelevancy of the charge that the petitioner shipped goods to Memphis is made clear by the *Cudahy* case itself. In that case the parent shipped goods directly to dealers in the jurisdiction of the subsidiary where service was made (267 U. S. at 335). This Court rejected this as irrelevant.

Respondent's effort to introduce extraneous factual issues into this case cannot obscure the fact that the essential question is whether the parent corporation can be served under Section 12 of the Clayton Act because of the activities within the jurisdiction of a wholly-owned subsidiary which is nonetheless a separate corporate and economic entity. It is this legal issue which was presented to the Court of Appeals and which is now presented to this Court.

IV.

Respondent's contentions with respect to the appropriateness of certiorari or the extraordinary writ are without merit.

Considerations Justifying the Grant of the Writ of Certiorari Are Present in This Case.

Respondent argues that certiorari is inappropriate since there is no conflict between the decision of the Court of Appeals for the Sixth Circuit refusing to issue a writ of mandamus in the present case and ruling of any other Court of Appeals. Petitioner has not urged that there is a specific conflict with any other single case for the simple reason that issuance of the extraordinary writ depends upon many considerations which are never the same in any two cases. As the Petition points out, however, there are present in the instant case all of the considerations which have been thought to justify issuance of the extraordinary writ. Denial of the writ under those circumstances is certainly not in accord with the decisions of this Court. Respondent has cited no case in which mandamus has been denied in a situation comparable to that presented here.

Many of the cases cited by respondent at page 2 of its brief did not raise a question with respect to the jurisdiction of the District Court. *E.g., Roche* v. *Evaporated Milk Association,* 319 U. S. 21; *Bankers Life & Casualty Co.* v. *Holland,* 346 U. S. 379; *In re Previn,* 204 F. 2d 417 (1 Cir. 1953); and *Radio Corporation of America* v. *Igoe,* 217 F. 2d 218 (7th Cir. 1954). Some of the cases cited exhibit a reluctance to issue the extraordinary writ which is entirely inconsistent with the views expressed by this Court in *La Buy* v. *Howes Leather Co.,* 352 U. S. 249. *E.g., Hydraulic Press Mfg. Co.* v. *Moore,* 185 F. 2d 800 (8th Cir. 1950); *Sun-*

beam Corp. v. *Picard*, 227 F. 2d 596 (6th Cir. 1955). *In re Josephson*, 218 F. 2d 174 (1 Cir. 1954), was a case cited in the minority opinion in the *La Buy* case (352 U. S. at 263), but which apparently did not commend itself to the majority.

Certainly in none of the cases cited by the respondent were there considerations requiring issuance of the extraordinary writ comparable to the compelling reasons presented here.

Moreover, the decision of the Court of Appeals in the instant case permits to stand a District Court decision which is in conflict with the decisions of this Court as well as decisions of a number of lower Federal courts and which constitutes usurpation of jurisdiction.

Moreover, the Court of Appeals has itself, in the language of the rules of this Court, departed from the "accepted and usual course of judicial proceedings" by denying a writ of mandamus solely because of the difficulty of the question of law presented.

Two of the cases cited in a footnote in respondent's brief (p. 7) in support of the proposition that "every reported case denies" an extraordinary writ where a difficult or doubtful legal problem is presented, have already been discussed and distinguished as being clearly inapplicable to the present issues (Pet., pp. 28-29). The third case, *In the Matter of Hussein Lutfi Bey*, 256 U. S. 616, held that in a situation where novel and difficult questions of law were involved, this Court had discretion to issue the extraordinary writ but would deny the writ where a question of jurisdiction over a ship allegedly belonging to a foreign sovereign was involved and the State Department had, on application by the defendant, declined to present a suggestion that the ship belonged to that sovereign.

• • • • • •

The Record Submitted Is Adequate.

Respondent challenges the sufficiency of the record certified to this Court by the Court of Appeals. This challenge is without any basis and should be considered for what it is—a device to obscure issues.

The record which was certified was in complete compliance with Rule 21(3) of this Court, which provides that the filing of copies of the appendices filed below, together with the proceedings in that Court, is an acceptable substitute for filing the entire record. This was done. Rule 21(3) was strictly complied with and there is no ground for objection by the respondent.

Respondent also suggests that the appendix filed in the Court of Appeals did not meet the requirements of that Court. There is no merit whatsoever to that suggestion since Rule 16(c) of the Court of Appeals for the Sixth Circuit requires only that relevant portions of the pleadings, the judgment below, and "such other parts of the record material to the questions presented as the appellant or petitioner deems it essential for the judges of the court to read in order to decide those questions" need be printed in the appendix.

Petitioner's Application for Mandamus to the Court of Appeals Does Not Preclude Its Applying for the Same Relief to This Court:

Respondent argues (pp. 8-9) that the petitioner's Motion for Leave to File a Writ of Mandamus should be denied because similar relief is available in the Court of Appeals. The existence of jurisdiction to issue such writs in the inferior courts does not, however, preclude application to this Court when the petitioner has exhausted its remedies below. Here the petitioner sought mandamus in the Court of Appeals and its petition was denied. The application to this Court for the extraordinary writ is

now entirely appropriate. This Court issued the extraordinary writ in exactly this situation in *Ex parte Kumezo Kawato*, 317 U. S. 69. *Ex. Parte Republic of Peru*, 318 U. S. 578, this Court entertained a petition for mandamus even though the petitioner had not exhausted his remedy in the Court of Appeals.

The Expense and Inconvenience to Petitioner Occasioned by the District Court's Ruling Justifies Issuance of the Extraordinary Writ.

Respondent asserts that the expense and inconvenience to the petitioner occasioned by the lower court's ruling are irrelevant. As has been pointed out in the Petition (p. 24) and in the decisions of this Court cited therein, such considerations of expense and inconvenience are relevant and important when taken together with other considerations justifying the use of the extraordinary writs.

The respondent lists the various discovery proceedings which have been invoked in behalf of the American Company, with the obvious implication that there was some impropriety in the conduct of these proceedings. On several occasions, however, in ruling on motions made by the plaintiffs, the District Court has stated that the proceedings conducted on behalf of that defendant were in all respects proper.

The petitioner will not take the time and space here to correct the respondent's colored and inaccurate description of the course of these proceedings.

There is no sense in the respondent's argument that because one defendant has already been subject to substantial expense and inconvenience by the necessity of preparing its defense in this case there is no harm in subjecting another party beyond the Court's jurisdiction to additional expense and inconvenience.

The *La Buy* Case Supports Issuance of the Extraordinary Writ.

The respondent attempts to confine the opinion in *La Buy* v. *Howes Leather Co.*, 352 U. S. 249, to a ruling on the propriety of the District Court's use of a Master. The opinion went far beyond this in defining the proper use of the extraordinary writs. Thus the dissenting justices expressed a "particularly grave concern" at what they felt was a departure from settled principles governing the use of the extraordinary writs. As petitioner has pointed out, both majority and minority agreed that mandamus is appropriate when the District Court has exceeded its jurisdiction (Pet., pp. 20-21).

Conclusion.

Petitioner respectfully prays that an appropriate case has been presented for this Court to grant the requested relief and prays that this Court review and reverse the decisions below.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM—1957

No. 218

MASSEY-HARRIS-FERGUSON, LIMITED

Petitioner,

vs.

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1957

No. 218

MASSEY-HARRIS-FERGUSON, LIMITED
Petitioner,

vs.

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

Foreword.

If petitioner had made just a halfway statement of the evidence considered by respondent, the following rather lengthy brief and extensive appendix would have been utterly unnecessary. It would have admitted itself out of this Court with the following from the petition:

> "The facts upon which the District Court relied in asserting jurisdiction were conceded by the Petitioner." (Petition, p. 19).

JURISDICTIONAL STATEMENT.

A careful check of the Rules of this Court indicate that the only possible basis for jurisdiction would be

Rule 19(b). It is believed that the petition fails to present a case within the rule, because—

1. (a) It asks this Court to review and reverse the action of the Court of Appeals for the Sixth Circuit in declining to review and reverse by the extraordinary writ of mandamus before final judgment an interlocutory order made upon a fact question. Whether right or wrong, the respondent made his interlocutory finding, not arbitrarily, but upon 453 pages of testimony, several affidavits, and several hundred pieces of documentary evidence.

(b) There is no conflict between the ruling of the Court of Appeals and this Court, or any other Circuit, with respect to the question here involved. Review of the decisions discloses that the opinion of the Court of Appeals is in accord with the decisions of this Court and all other circuits.*

(c) No important State or Territorial question has been decided in any way in conflict with State or Territorial Law; no important question of Federal Law has

*Starting with Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, followed by Roche v Evaporated Milk Association, 319 U.S. 21, and Bankers Life & Casualty Co. v. Holland, 346 U.S. 379; and comparing In the Matter of Josephson (*1st Cir.*), 218 F. (2d) 174; In Re Previn (*1st Cir.*), 204 F. (2d) 417; U. S. v. Byers (*2d Cir.*), 144 F. (2d) 455; Magnetic Eng. & Mfg. Co. v. Dings Mfg. Co. (*2d Cir.*), 178 F. (2d) 866; Re: Eastman Kodak Co. (*3rd Cir.*), 48 F. (2d) 125; American Airlines v. Forman (*3rd Cir.*), 204 F. (2d) 230; National Bondholders Corp. v. McClintic (*4th Cir.*), 99 F. (2d) 595; Hyman v. McLendon (*4th Cir.*), 103 F. (2d) 294; Re: American Employers Ins. Co. (*5th Cir.*), 91 F. (2d) 731; Re: Illinois Central R. Co. (*5th Cir.*), 192 F. (2d) 465; Direct Transit Lines, Inc., v. Hon. Raymond W. Starr (*6th Cir.*), 219 F. (2d) 699; Sunbeam Corp. v. Picard (*6th Cir.*), 227 F. (2d) 53[illegible]; Comfort Equip. Co. v. Steckler (*7th Cir.*), 212 F. (2d) 371; R. C. A. v. Igoe, (*7th Cir.*), 217 F. (2d) 218; Carr v. Donohoe (*8th Cir.*), 201 F. (2d) 426; Sound Inv. & R. Co. v. Harper (*8th Cir.*), 178 F. (2d) 274; Hydraulic Press Mfg. Co. v. Moore (*8th Cir.*), 185 F. (2d) 800; Shaheen v. Shriver (*9th Cir.*), 221 F. (2d) 715; Fish v. Kennamer (*10th Cir.*), 37 F. (2d) 243, cert. den. 281 U. S. 744; Loew's. Inc., v. McGuire, Ct.App. D.C., 205 F. (2d) 719, *no conflict can be discovered.*

been decided which has not heretofore been but should be decided by this Court; no Federal Question has been decided in a way in conflict with applicable decisions of this Court, and there has been no departure from the accepted and usual course of judicial proceedings or a sanction by the Court of Appeals of a departure by the District Court, which should call for an exercise of this Court's power of supervision.

(d) The outmoded and threadbare assertion that petitioner will be subjected to unnecessary expense, harrassed and required to participate in a long drawnout trial has been repeatedly considered and rejected.*

Petitioner could almost be said to expose itself to ridicule by advancing this plea. Duncan, president of the **parent company,** which insists that it should not be sued anywhere in the United States and threatens reprisals, wrote the Memphis Branch Manager as late as December 9, 1955:

> **"... I have remained convinced that the backbone of the Company's strength and by far the biggest growth possibilities could be found in the great United States farm implement market." (Exh. IA to Haggard, app. p. 53b).**

This action was instituted August 21, 1956. Very shortly after that petitioner's subsidiary filed its answer. That defendant (wholly owned subsidiary of petitioner), represented by petitioner's present counsel—three members

*Roche v. Evaporated Milk Assn., 319 U.S. 21, 87 L. Ed. 1185; Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 98 L. Ed. 106; Re: Sylvania Electric Products (*1st Cir.*), 220 F. (2d) 423; Petition of Therianos, (*3rd Cir.*), 171 F. (2d) 886; Sunbeam Corp. v. Picard (*6th Cir.*), 227 F. (2d) 596; Comfort Equip. Co. v. Steckler, (*7th Cir.*), 212 F. (2d) 371; Sound Inv. & R. Co. v. Harper (*8th Cir.*), 178 F. (2d) 774; Hydraulic Mfg. Co. v. Moore (*8th Cir.*), 185 F. (2d) 800.

of a leading New York law firm, one lawyer from Racine, Wisconsin, one from Milwaukee, Wisconsin, and two members of a leading Memphis law firm—filed notices to take pre-trial depositions of eighteen witnesses on September 7, 1956; caused comprehensive subpoenaes duces tecum to be issued; commenced taking depositions September 18, 1956, suspended September 21, 1956, at noon; refused to resume until required by court order entered November 26, 1956 (said order required the taking of the depositions to be resumed January 7, 1957, but they were not resumed until 1:00 P.M., February 15, 1957); examined one witness for 23 days, and refused to terminate that examination until required by court order; took the deposition of another witness in New Orleans, Louisiana, with three lawyers present, approximately twenty days; commenced and suspended the depositions of other witnesses; and has roved at random through plaintiffs' records and indiscriminately numbered for identification thousands of documents. Obviously petitioner is paying all of that expense through its wholly owned subsidiary, and obviously there will be no duplication of those incurred expenses and delays by requiring petitioner to defend.

Those activities, extending over three hundred and thirty-nine days (up to July 27, 1957), at tremendous expense borne by petitioner through its wholly owned subsidiary, is hardly consistent with a sincere desire to avoid the expense of protracted litigation.

Respondent has, out of respect for the United States Court of Appeals and this Court, refused plaintiffs' every effort to require the petitioner to answer and to set the case for trial.

(e) The effort to alarm this Court, not to say panic it, by urging a heretofore unknown ground for certiorari —the claim that respondent's interlocutory order will result in serious harm to international commercial relations, and to domestic and foreign commerce of the United States (Pet., p. 18), offering to support it with the purported statement of the Premier of Ontario and the purported provisions of Canadian Law (App. to Pet., pps. 17a-21a) presents nothing to this Court sitting in review for the correction of errors. No such contention was advanced before respondent. *The purported statement of the Premier and the alleged provisions of Canadian Law were not introduced in evidence.* They could only be considered by respondent, the Court of Appeals, or this Court if properly introduced in evidence in the nisi prius court. The federal rule is that foreign law is a fact which must be pleaded and proved. The federal courts do not take judicial notice of foreign law.*

Tennessee requires laws of a foreign country to be pleaded and proved; its Courts cannot take judicial notice thereof. Tennessee Code Anno., 24-611; Evans v. Sheridan, 28 Tenn. App. 90, 186 S.W. (2d) 911.

Obviously the purported statement of the Premier is in the same situation and will not be considered by this Court because it was not introduced or proved in the trial court. General Portland Cement v. Perry, (7th Cir.), 204 F. (2d) 316, 320. Also see, Evans v. Sheridan, 28 Tenn. App. 90, 186 S.W. (2d) 911. Letters from an

*Black Diamond S. S. Corp. v. Stewart, 336 U. S. 386, 396-397, 93 L. Ed. 754; Cuba R. R. Co. v. Crosby, 222 U. S. 473, 479, 56 L. Ed. 274; Liverpool & G. W. Steam Co. v. Phoenix Ins. Co., 129 U. S. 397, 32 L. Ed. 788; Walton v. Arabian Am. Oil Co. (2d Cir.), 233 F. (2d) 541, cert. den. 352 U. S. 872; Liquidating Corp. v. Brownell, D.C. Del., 130 F. Supp. 691.

eminent Canadian barrister are in the Court of Appeals record refuting petitioner's claim with respect to Canadian Law.

There is nothing in Rule 34 or in any other of the Federal Rules of Civil Procedure which would permit a trial judge to order documents sent out of Canada in contravention of Canadian Law. This respondent hopes that it can be safely assumed that he will, when making orders with respect to production of documents for inspection and copying, accord to petitioner all the protection to which it is entitled.

(f) Petitioner's feeble reliance on LaBuy v. Howes Leather Co., Inc., 352 U.S. 249, 1 L. Ed. (2d) 290, when even casually considered, falls of its own weight. The full extent of that holding is that a District Judge will be prohibited by mandamus from abdicating his judicial duties in favor of a Master (1 L. Ed. (2d) 290, at p. 297), and this Court said:

> "Certainly, as the Court of Appeals found here, there was a clear abuse of discretion." (1 L. Ed. (2d) 290, at p. 298).

The opinions in LaBuy and Bankers Life and Casualty Co., supra, were both written by Mr. Justice Clarke. It appears with certainty that the Court did not intend to retract or restrict anything said in the Bankers Life case. Referring to the Bankers Life case, Mr. Justice Clarke said in LaBuy:

> "* * * The former case did not concern rules promulgated by this Court, but rather, an Act of Congress, the Venue Statute. Furthermore, there we pointed out that '* * * All Writs Act is meant to

be used only in the exceptional case where there is clear abuse of discretion or 'usurpation of judicial power * * *'"

Petitioner did not mislead the Sixth Circuit by its fallacious attempt to justify mandamus in this case by the holding in LaBuy. (Pet.'s App., p. 7a).

(g) Petitioner urges as a ground for jurisdiction an observation in the opinion of the Court of Appeals (Pet.'s App., p. 6a) that the question is a difficult one and the ruling doubtful. (Petition, pps. 9 & 26). It is not believed that there is a reported or unreported case holding that the extraordinary writ of mandamus should be granted to reverse an interlocutory ruling of a District Court on a question of fact because the question was either difficult or doubtful. It may be that the distorted, shaded, not to say colored, assertions in the petition for mandamus, with no reference to the evidence in the case, may have engendered a transient thought that the question could be considered difficult or doubtful. Petitioner had attempted to have its petition for mandamus ruled on without transmitting the record in the District Court to the Court of Appeals. It was only after plaintiffs' counsel moved to dismiss and insisted that the question could not be considered by the Court of Appeals without the record that petitioner's counsel applied to respondent for an order sending the record up. It is believed that every reported case denies the writ of mandamus where the court finds the question to be difficult or doubtful.*

2. Jurisdiction is further invoked in a manner unknown in Federal Jurisprudence. Petitioner asks this

*Re: Hussein Lutfi Bey, 256 U.S. 616, 619; Re: Muir, 254 U.S. 522, 533; Re: Chicago, R. I. & Pac. R. R. Co., 255 U.S. 273, 279.

Court to review and reverse the Court of Appeals' refusal to reverse by the extraordinary writ of mandamus an interlocutory ruling of respondent made on a fact question, where the respondent was acting in his recognized and established judicial capacity. The opinions of respondent and the Court of Appeals (pps. 10a-11a & 4a, App. to Pet.) state that respondent decided this question of fact on—"several hundred pages of depositions, which included numerous exhibits, * * *." (App. to Pet., p. 4a). Petitioner is asking this Court to grant certiorari while at the same time withholding all that evidence from this Court. It is not believed that the rule of this Court permitting the filing of the record after the writ is granted can be relied on in reply to the statements in this paragraph. Petitioner is asking the Court to grant the writ without giving it the benefit of any evidence. Petitioner's appendix filed in the Court of Appeals falls far short of complying with the rules of that Court providing for the use of appendices. Those rules surely do not contemplate withholding from the Court of Appeals all evidence upon which the District Judge rested his decision. Petitioner has not met the requirements of Rule 21 (3) of this Court relieving the petitioner of the requirement in paragraph 1 of Rule 21 which requires the record in the lower court to be filed with the petition. By causing the record to be sent to the Court of Appeals Petitioner must have felt that its appendix was wholly deficient.

It is believed that the motion for leave to file petition for writ of mandamus (Pet. p. 31) can be summarily disposed of. Rule 21(3) requires a statement with particularity why the relief sought is not available in any other court. The petition for certiorari now under consideration discloses that resort was had to the Court of

Appeals for the Sixth Circuit for mandamus, and that Court's jurisdiction invoked. The petition for certiorari does not challenge that Court's jurisdiction, but admits it. The jurisdiction of courts of appeal to entertain petitions for writs of mandamus and alternate petitions for writs of prohibition is clearly recognized in LaBuy, supra. Petitioner has at every step admitted the jurisdiction of the Court of Appeals. It has never denied it.

The Evidence Was More Than Adequate to Support An Interlocutory Finding Of Jurisdiction.

It is believed that the Jurisdictional Statement is an adequate answer to the petitions for certiorari and mandamus. However, respondent is not willing for the slightest impression to be left that there has been a usurpation of judicial power or an abuse of discretion. With the Court's permission a statement of some, but not all, of the evidence upon which respondent overruled the motion to quash is submitted in support of this reply. Since petitioner asks the Court to act without the benefit of the record, the following statement is supported by an appendix abridged and shortened as much as possible.

The Marshal's returns of the services of process are set forth in the appendix, page 1b.

Petitioner Regularly Transacted Business In Respondent's Judicial District Directly From Its Canadian Headquarters, Used The Memphis Branch Directly From Its Canadian Headquarters; And Used Its Subsidiary As Its Marketing Outlet And As Its Completely Dominated And Controlled Instrumentality.

Plaintiffs filed a sworn response to petitioner's motion to quash, denying all of the material allegations in the affidavits filed in support of that motion; alleging that petitioner had continuously shipped goods manufactured

by it to all or most parts of the United States, and had continuously shipped goods manufactured by it to Memphis, Tennessee, within the Western District of Tennessee; averring that it carried on a tremendous business in the Western District of Tennessee through its own instrumentalities and agencies; denying that petitioner's subsidiary had been independently operated; averring that the subsidiary's predecessor was wholly owned by petitioner, and organized as an outlet for the sale in the United States of petitioner's products; averring that the subsidiary has at all times been wholly owned, dominated by, and utilized as an instrumentality and agency by petitioner, far beyond the control inherent in stock ownership.

Howard Sullins, President of both plaintiffs, filed his affidavit in support of the response. The affidavit states that at the time of amalgamation plaintiffs held cancellable franchises from Harry Ferguson, Inc.; that Southland Tractors, Inc., also handled other lines, including the Gleaner Combines; that on or about September 8, 1953, Stoup and Sweeney, Vice Presidents of the United States subsidiaries, came to Memphis and discussed at length future plans for marketing Ferguson and Massey-Harris products in West Tennessee; assured plaintiffs that the lines were complementary and not competitive, urged the affiant to cooperate in getting Ferguson dealers to take Massey-Harris franchises, advised affiant that Southland Tractors would not be permitted to continue marketing the Gleaner Combines, *or any other lines which would compete with Massey-Harris products*, and that Southland Tractors gave up that combine line; that affiant had heard Bloom (Petitioner's First Vice President) testify that he sent Stoup and Sweeney to Memphis.

That affidavit stated that shortly after September 8, 1953, the Massey-Harris Branch Manager in Memphis, together with other representatives, called on affiant in Memphis to cooperate and expedite cross-franchising of Ferguson dealers, and urged affiant's cooperation, advised that they had made the call subject to Duncan's instructions, and that Duncan was President and Chairman of the Board of Massey-Harris-Ferguson, Ltd.; that Duncan returned to Memphis in the latter part of 1955, discussed plaintiffs' needs for additional implements, and with other officials inspected the entire plant of Southland Tractors, Inc.; that in April, 1954, a Ferguson tractor was shipped to Southland Tractors, to be delivered to Canadian engineers of the Limited Company for use in field testing petitioner's newly developed implements; that petitioner advertised its products in national magazines which were widely circulated in West Tennessee; that shortly after amalgamation petitioner commenced shipping implements and parts from its Canadian plant to Southland Tractors in Memphis, Tennessee, with a considerable degree of regularity, to fill orders for products originating in Memphis, Tennessee.

The affidavit relates numerous instances in which petitioner directly corresponded with Southland Tractors by mail, and is abundantly supported by exhibits, including shipping orders on petitioner's printed forms and bills of lading, showing shipments direct from petitioner's Canadian plant to Memphis, Tennessee.

Petitioner went to trial on the issue here involved without denying anything contained in the response or Sullins' affidavit and without calling Sullins and cross-examining him.

Plaintiffs' response and Sullins' supporting affidavit should have been a part of petitioner's appendix. Those documents are narrated to reduce the size of the record and printing expense. Pursuant to subpoena duces tecum plaintiffs took the depositions of officers and representatives of petitioner's wholly owned subsidiary covering 453 pages, and caused the production and introduction of several hundred documents. Plaintiffs applied for letters rogatory addressed to the Supreme Court of Ontario seeking to examine officers of petitioner and to examine documents, upon the sole question of whether petitioner had transacted business in West Tennessee. The Limited Company vigorously and strenuously opposed the application. After a full hearing this respondent ruled that plaintiffs were entitled to take that proof. Letters rogatory limited solely to that one issue were accordingly issued, making Presidential Request for the cooperation of the Supreme Court of Ontario. Disregarding, if not to say defying, respondent's ruling on its opposition, petitioner employed a Queen's counsel and persuaded the Canadian nisi prius Court to refuse compliance with the Executive Request. Plaintiffs urged the logical inferences to be drawn from petitioner's "disturbed and distressed" fear of what the evidence might disclose. Respondent found adequate evidence in the testimony and documents to make reliance upon inferences unnecessary.

The testimony of petitioner's Executive Vice President, officers and agents of the subsidiary, and the documents introduced, disclosed — —

1. The Limited Company's activities in the United States and West Tennessee with respect to the market-

ing of Ferguson products after acquiring the stock of Harry Ferguson, Inc.

2. The Limited Company's direct and continuous business transactions in West Tennessee.

3. The Limited Company's disregard of the subsidiary's corporate identity and its use of the subsidiary as a marketing division.

4. The conspiracy and the overt acts claimed by plaintiffs to have been committed in West Tennessee, taking this case completely out of the sweep of Cannon Mfg. Co. v. Cudahy Co., 267 U.S. 333, and bringing it within the scope of U.S. v. LeHi Valley R. Co., 254 U.S. 255, 65 L. Ed. 253, Industrial Research Corp. v. General Motors Corp., 29 F. (2d) 622, and the unbroken line of decisions hereinafter cited.

The Limited Company's Activities In The United States And West Tennessee With Respect To The Marketing Of Ferguson Products After Acquiring The Stock Of Harry Ferguson, Inc.

(a) Prior to August 16, 1953, Harry Ferguson, Inc., was engaged in manufacturing farm machinery, tractors and implements, with its headquarters, offices and manufacturing plant in Detroit, Michigan. It marketed its products through distributors, who in turn marketed them through dealers. It was marketing all of its products through twenty-nine distributors, and in turn through approximately two thousand dealers, who constituted the distributors' dealer organizations.

(b) The trade areas of the Massey-Harris Branches and the Ferguson distributors were generally the same.

(c) Plaintiffs were Ferguson distributors. Southland Tractors, Inc., had its principal place of business in Memphis, Tennessee, and its territory embraced West Tennessee, North Mississippi, Arkansas, and a small part of Alabama. The Massey-Harris Memphis Branch operated in substantially the same territory. Memphis is in respondent's judicial district. Farm Tractors, Inc., was owned by Southland Tractors, Inc. Its principal place of business was in Oklahoma City, and its trade territory was the State of Oklahoma and a part of the Texas Panhandle. The Massey-Harris Branch in Oklahoma City operated in the same territory.

(d) Sometime prior to August 16, 1953, Massey-Harris Company, Ltd., acquired all of the capital stock in Harry Ferguson, Inc., and other Ferguson companies. A letter from the President of the Limited Company to its stockholders, referring to the merger as the amalgamation, stated that petitioner had thereby acquired all Ferguson patents, all Ferguson know-how, and all Ferguson business. (App. p. 4b).

(e) The amalgamation was announced by radio, news release, telegrams and letters on August 16, 1953. The change of petitioner's name to Massey-Harris-Ferguson, Ltd., was simultaneously announced. From and after August 16, 1953, the corporate identity of Harry Ferguson, Inc., was obliterated, except that its charter was not surrendered. On that date Massey-Harris-Ferguson, Ltd., placed its Executive Vice President, H. H. Bloom,* in full charge of all Harry Ferguson operations, and he testified that from that date he dictated every policy and

*Bloom's official title was carried in petitioner's Annual Reports—"First Vice-President, President United States Division." (App. pps. 97b & 107b).

supervised and directed all management and operations. (App. pps. 2b-3b).

(f) Bloom testified that, acting in his capacity as Vice President of petitioner, and in no other capacity (App. p. 3b), he thereafter ran the business of manufacturing and marketing Ferguson tractors and implements. He was never an officer or a Director of Harry Ferguson, Inc., or on its payroll. (App. pps. 3b-4b). Ferguson tractors and implements were sold and shipped in interstate commerce, and into the Western Judicial District of Tennessee, as before the amalgamation, and representatives, acting under Bloom's direction, supervision and control, continued to regularly travel in West Tennessee, regularly transacting business with Southland Tractors, Inc., in Memphis. Those representatives continuously supervised the business of Southland Tractors, Inc., and sold Ferguson merchandise within the District. (App. pps. 12b-13b). All Ferguson business in West Tennessee was transacted by petitioner in that manner until September 1, 1954, at which time Harry Ferguson, Inc., was formally merged into the Massey-Harris Company, petitioner's wholly owned subsidiary and its only outlet in the United States for its products manufactured in Canada. Bloom and Hooker left no doubt that all Ferguson business (including its regular business in West Tennessee) was carried on by the Limited Company. (App., pps. 3b & 9b, 12b-13b). Bloom wrote identical letters *to Ferguson distributors* and *dealers* on the stationery of the *Limited Company*, and signed them as *First Vice President of the Limited Company*, stating in part:

> "We, who will be responsible for the management of the parent Massey-Harris-Ferguson, Ltd., want

to give you assurance, etc." (App., p. 14b).

And:

> "It is not *our intent* to eliminate any Ferguson or Massey-Harris dealer who is performing satisfactorily." (App., p. 14b).

And:

> "*In our opinion,* it is basic that the distribution of Ferguson products continue the same pattern that was in existence before the announcement was made of the intent to amalgamate the Ferguson interests and Massey-Harris Company, Ltd. *into the new parent company, Massey-Harris-Ferguson Company, Limited.*" (App., p. 16b).*

The correspondence leaves no doubt that the Limited Company was dealing direct with the distributors** and with both Massey-Harris and Ferguson dealers, and was not dealing with them through the subsidiary.

(g) One of Bloom's early activities was the cancellation of six Ferguson distributors. All telegrams and letters in appendix pps. 13b, 17b, 18b, 19b, 20b, 21b, 22b, 23b, 24b & 25b were sent pursuant to Bloom's instructions. (App. pps. 6b, 7b, & 29b). They are all typical. The business and inventories of each of those distributors was taken over by Massey-Harris Branches in the respective trade areas. Bloom selected and designated the persons who called upon each of those distributors and directed them how to proceed. (App. pps. 4b-6b). He caused letters and telegrams to be sent to all other Ferguson distributors giving assurance that they would be retained. His telegram and Stoup's telegram to plaintiffs'

*Unless otherwise indicated, all emphasis in this brief and appendix supplied.

**Letter from Toronto to Plaintiff (App., p. 33, 34b) is typical.

President were typical. Those two telegrams were sent into respondent's judicial district and dealt expressly with petitioner's business. (App. pps. 13b & 25b-26b).

(h) Very soon thereafter Bloom sent two representatives to Memphis to discuss the terms on which plaintiffs would be continued as Ferguson distributors. (App. p. 5b). While in Memphis those Limited Company representatives prevailed upon plaintiffs to enter upon a program whereby their franchised Ferguson dealers would be persuaded to also be franchised to handle Massey-Harris products, and Massey-Harris franchised dealers would be prevailed upon to handle Ferguson products upon the express assurance that the two lines would be continued as complementary and not competitive. These activities of the Limited Company were among the many activities carried on by the Limited Company in the Western Judicial District of Tennessee, and are also claimed by plaintiffs to be a part of the alleged conspiracy in violation of the Anti-Trust Laws.

(i) There was no corporate or contractual relationship between Harry Ferguson, Inc., and the Massey-Harris Company. The stock in each was wholly owned by the Limited Company. Bloom, Executive Vice President of the Limited Company, was in complete charge of both. The headquarters of the Massey-Harris Company were in Racine, Wisconsin. No person was an officer or Director of both Harry Ferguson, Inc., and the Massey-Harris Company. (App. pps. 3b-4b). Shortly after Bloom took over all Harry Ferguson, Inc., activities, he transferred the Ferguson sales organization to the headquarters and offices of the Massey-Harris Company at Racine and thereafter directed the operations of each (App. p. 8b). After resignation of Ferguson officials Bloom transferred a key official of the Massey-Harris

Company from Racine to Detroit and made him General Manager of the Ferguson operations there. (App. p. 7b).

(j) H. G. Klemm, formerly with Harry Ferguson, Inc., was made a Vice President of the Limited Company, and charged with the duty of coordinating all engineering in Toronto, Racine and Detroit. He was placed in charge of "All North American Engineering." (App. pps. 27b-28b & 79b). Klemm's headquarters are still in Detroit. (App. p. 1b).

(k) On October 2, 1953, Bloom wrote Ferguson Distributors, who had not been cancelled, confirming their future, and said:

> "In some areas we have placed the distribution of Ferguson products in a special division of *our* Branches." (App. p. 16b).

(The Limited Company had no branches in the United States other than the Massey-Harris branches, which it now claims for the first time belong to the subsidiary.)

On the same day (October 2, 1953) Bloom wrote all Ferguson dealers, referring to the amalgamation of the world-wide Ferguson interests—"into a new company, Massey-Harris-Ferguson, Ltd." (App. p. 14b). That letter was signed by him as First Vice President of the Limited Company.

Bloom admitted that the letters to Ferguson dealers (App. pps. 18b-25b) were written pursuant to his direction. (App. p. 6b-7b).

Bloom admitted that he caused letters to be written to Ferguson distributors and dealers enclosing a publication which contained the following:

"Amalgamation of Ferguson and Massey-Harris will provide an impressive net of manufacturing facilities, extending all over the World, including France and the United States at Detroit, Racine, Batavia and Fowler, California; plus others in Canada, England, Scotland, South Africa, France and Germany." (App. 4b).

Bloom's testimony and his letters leave no doubt that he continued to supervise and direct the business in West Tennessee the same after September 1, 1954, as he did before the September 1st merger.

Boardman, who looked after the Ferguson business in West Tennessee from the beginning, and under Bloom's supervision and direction, has continued right on doing the same work since September 1, 1954. (App. pps. 12b-13b).

Petitioner has not denied any of this.

The Limited Company's Direct And Continuous Business Transactions In West Tennessee.

(a) The personnel of the Limited Company in Toronto transacted business directly in West Tennessee, bypassing the officials and executives of the subsidiary at Racine. (App. p. 5b, 6b, 10b, 12b, 13b, 34b thru 46b, 47b thru 68b).

Bloom discussed the business of the Memphis Branch with the Branch Manager; Duncan, Chairman of the Board and President of the Limited Company came to Memphis and inspected the Branch plant on one occasion; and on another occasion Duncan came to Memphis,

discussed with the Memphis Branch Manager the franchising of Ferguson dealers to handle Massey-Harris products. (App. pps. 34b-36b).

Haggard reluctantly admitted that while Duncan was in Memphis there was some discussion—

> "Q. On how the relationship in Memphis would be affected between the branch and the distributor, Southland Tractors, Inc., didn't he?
>
> A. Yes, sir." (App. p. 37b).

The Memphis Branch Manager admitted that he did carry out Duncan's suggestions with respect to cross-franchising Ferguson and Massey-Harris dealers. (App. pps. 35b-36b).

(b) The Memphis Branch Manager was required to attend annual meetings of branch managers, held in the United States, and which were attended by Duncan, Bloom, Burgess and Metcalfe, all executives of the Limited Company, and by key personnel from Toronto, who would talk on sales, credits and engineering. (App. pps. 39b-40b & 40b-41b).

(c) The Limited Company shipped products with an annual dollar volume direct from Canada to the Memphis Branch and to dealers in West Tennessee of approximately $3,000,000.00 (App. pps. 45b-46b). Petitioner's shipments from Canada to the Memphis Branch and to its dealers, including those in West Tennessee, made up sixty to seventy-five (60% to 75%) percent of that branch's total volume. (App. 44b-45b).

(d) Bloom admitted that the real estate occupied by

the Massey-Harris Branch in Memphis is included in the asset column of the Massey-Harris-Ferguson, Limited, Balance Sheet under the heading "Lands, Buildings and Equipment—$30,713,628.00, and that the Inventory of the Massey-Harris Branch in Memphis is included in the item in the asset column showing Inventories—$87,133,696.00. (App. pps. 70b-71b & 108b).

(e) Return shipments were made direct from the Memphis Branch to Toronto. (App. p. 46b).

(f) Bloom wrote the Memphis Branch Manager on September 10, 1955, from Toronto, requiring him to furnish material for a magazine article to be written by Bloom. (App. p. 51b).

(g) Toronto officials kept strict supervision over parts inventory in the Memphis Branch (App. pps. 47b-49b). Toronto also kept strict control over the future requirements of the Memphis Branch for Canadian made implements as well as other branches in the United States. (App. pps. 49b-51b).

Bloom wrote all Vice Presidents and Department Heads insisting upon curtailment of expenses, and included the Memphis Branch Manager on the mailing list. (App. 52b).

Duncan wrote the Memphis Branch Manager from Toronto designating him as a "District Manager of the United States Division," and demanded his cooperation and assistance. (App. pps. 52b-54b).

Limited Company's Use Of Branch For Its Field Testing Engineers.

It appears that petitioner was extensively engaged in developing for the United States market agricultural implements which had to be tested in the field in the agricultural areas for which they were designed. The evidence disclosed that petitioner's Toronto officials and engineers dealt continuously with the Memphis Branch with respect to such testings. It shipped tractors and implements to the Branch for that purpose, and required the Branch to advance funds to the Canadian engineers while they were operating in the Branch's territory (App. pps. 54b-55b); required the Memphis Branch to receive shipments from Canada of experimental implements, arrange with landowners for use of ground for testing, furnish Canadian engineers with parts and tools from the Branch, and trace shipments made direct from Canada to testing sites. (App. pps. 54b-55b, 55b-59b, 59b-62b, 62b, 63b, 64b-66b & 67b-68b).

The Memphis Branch advanced to Canadian engineers for expenses or salaries $9,300.00 during a sixty-day period in 1955, and over a period of twenty-seven months, commencing with the last three months of 1953, a total of $15,678.50.

The Limited Company's Disregard Of The Subsidiary's Corporate Identity And Its Use Of The Subsidiary As A Marketing Division.

It is conceded that the present subsidiary and its predecessors at all pertinent times transacted business throughout the United States and had a place of business and transacted business in Memphis, Tennessee.

The Massey-Harris Company, Limited, Petitioner's predecessor, was a Canadian corporation engaged in the

manufacture, sale and distribution of farm implements. It claims to be about one hundred years old and claims that its operations are world-wide. The J. I. Case Plow Works became prominent in the tractor field in the United States in 1914 and in 1928 the Massey-Harris Company, Limited, bought it out, and thus entered the United States market.

> "The purchase had provided Massey-Harris with nation-wide distribution in the United States making it a full line contender for the American market." (Exh. 6 to Milne, p. 62)?

* * *

The Massey-Harris Company was at all times a wholly owned subsidiary, and staffed by officers and directors of the parent company. Elliot A. Adams, who was employed by the parent company, was placed in charge of Engineering for the subsidiary on December 1, 1936. (Tr. pps. 87-88 & Response to Request for Admissions No. 5).

Pripr to the amalgamation on August 16, 1953, a majority of the directors of the Massey-Harris Company were also directors of the Limited Company. Interlocking officers and Directors prior to amalgation were:

> James S. Duncan, Chairman of the Board and President of the Limited Company; Chairman of the Board of the subsidiary (Tr. p. 88);
>
> H. H. Ploom, "First Vice President of the Limited Company. President United States Division" (Tr. p. 89);

and the individuals who were Directors on both Boards, or a Director on one Board and an Officer on the other were:

C. N. Appleton, on both Boards (Tr. p. 90);

E. G. Burgess, Director of subsidiary and Vice President of Limited (Tr. pps. 90-91);

R. H. Metcalfe, Director of subsidiary and Vice President of the Parent (Tr. p. 91);

W. W. Mawhinney, Director of subsidiary and Vice President of Parent (Tr. p. 91);

W. E. Phillips, Director of both companies (Tr. pps. 91-92);

E. P. Taylor, Director of both companies (Tr. p. 92);

M. W. McCutcheon, Director of both companies (Tr. p. 93);

J. A. McDougold, Director of both companies (Tr. p. 93);

C. W. Webster, Director of both companies (Tr. pps. 93-94)

(See Directors listed in Exh. 10 to Bloom). App. p. 97b.

Proxy for voting all stock ran from Limited Company to Duncan or Bloom or Garrick or Milne. (Tr. p. 93). It is typical of all proxies used by the Limited Company. (Tr. p. 96).

Duncan, the then President of Massey-Harris Company, Ltd., made the appointment which transferred Bloom to Racine in 1949 (Tr. p. 205), and Duncan transferred him back to Toronto late in 1955. (Tr. p. 208).

After the United States subsidiaries were merged into the present subsidiary there was little if any change in the personnel of officers or Directors of either the Parent or subsidiary. (App. p. 107b).

Exhibit 2A thru J to Haggard, (App. pps. 80b-86b), dated May 10, 1955, leaves little if anything for debate that the United States Subsidiary was never an independent corporate entity, but—(a) was used as the only outlet in the United States for Limited Company products, and (b) was declared to be and was used as the unconditionally controlled and dominated "operating division" or instrumentality through which the Limited Company transacted all its business in the United States and West Tennessee. The entire exhibit was written by the President and Chairman of the Board of the Limited Company. (See App. pps. 80b-81b, 1st par. Exh. 2B).

It is addressed to (among others) the Memphis Branch Manager and the plaintiffs in this case—"Distributors." It refers to the "North American Organization," and the "United States Operation."

The words "Division" and "Divisional" used to designate the "United States Operation" appear nineteen (19) times. (App. pps. 80b-86b).

The Organization Structure (Exh. 2D-J) (App. pps. 83b-86b) emphasizes that the Limited Company executives retain an iron grip on every activity of the United States subsidiary. Petitioner's First Vice President is in charge of its "overall operations." Other vice presidents and officers are in supreme control of all functions —R. H. Metcalfe, "Capital Expenditures," "budget controls," "establishment of prices," etc. (App. p. 83b);

Burgess, "planning and location of new manufacturing facilities, equipment, machines, tools, etc." (App. p. 83b); Klemm, "Engineering"; Appleton, "Salaries, etc." (App. p. 83b); E. H. Metcalfe, "Accounting, budget controls, etc." (App. p. 84b); Scott, every activity with respect to industrial and wage relations (App. p. 84b). *On Exhibit 2G* (App. p. 84b) *the United States subsidiary is spelled out as an "Operating Division."*

The foregoing exhibit (No. 2A thru J to Haggard), in its entirety, shows clearly that officers of the subsidiary had no authority to act (even with respect to minor matters) without authority from the Parent.

Stipulated Exhibit 00823 A thru H, dated January 17, 1956, was written by petitioner's First Vice President to the Executive Vice President of the subsidiary. It reemphasizes Duncan's repeated emphasis in Exhibit No. 2 to Haggard. (App. pps. 87b-95b). Bloom refers to his letter, as "this directive." He emphasizes:

> "* * * It is recognized that in the case of larger machines, such as tractors and combines, the impetus for development may come more from top management than from sales and research departments. * * *." (App. p. 88b).

The letter repeatedly refers to the "U. S. Operation" and the "U. S. Department," and "Sales Division." That exhibit, pages F thru H (App. pps. 92b-95b), in setting up the Parent's personnel and operating structure, contains the following heading—"Western Hemisphere Engineering—Head Office Toronto." Among the Divisions listed is "U. S. Division."

Exhibit No. 14 to Haggard, dated December 31, 1953

(App. pps. 117b-118b), was written by Bloom during the period he said he was in charge of all United States Operations, including all Ferguson Operations, and charged with the duty of subsequently merging the two United States Subsidiaries. It was addressed to many people. It was addressed to several people in Detroit under the heading—"FERGUSON DIVISION." He insisted upon a "sharp reduction" in operation expenses, and refers to too many telephone calls—"between Detroit, Racine and Toronto by various departments." (App. p. 118b).

Exhibit No. 33A to Haggard, dated April 5, 1956, was written by Bloom in Toronto to Milne in Racine. (App. pps. 118b-121b). The subject of the letter is stated—"Critical Combine Situation." (Combines are probably petitioner's most important line of products). It refers to the serious situation that exists in respect to—"* * * combine shipments to the U. S. Branch Territories." It calls the subsidiary—"The U. S. Division." Bloom discusses the United States demand for combines, necessity for advance shipments, and refers to—"* * * requirement dates of our branches," and—

> "This letter is intended, once and for all, to point out to your sales divisions and the branch executives of our company's U. S. Division that we must have action." (App. p. 120b).

It continues—

> "It all adds up to one simple thing—that is that everyone of our branch managers must, without further insistence on the part of the top management, etc." (App. p. 121b).

Copies of that letter were mailed to—"All U. S. Branch Managers."

The following is from a "MEMORANDUM," dated July 19, 1954, produced from the files of the Memphis Branch Manager Haggard, addressed to L. M. Sweeney, from H. H. Bloom:

> "I am leaving for Toronto on the evening of July 27th, to attend a Board meeting on July 28th. *At that time, it will be necessary for me to make some definite statements about the projected outcome of our* 1954 *U.S.A. business.*"

Further evidence of disregard of corporate entity and complete integration is reflected by Duncan's letter of October 12, 1955, addressed to "All Vice Presidents, Department Heads, Works Managers and Branch Managers," and was produced from the files of the Memphis Branch Manager. (App. pps. 121b-123b).

Exhibit 22 A thru C to Haggard is a long letter dated August 31, 1954, announcing official appointments. It is from Bloom, addressed—

> "TO: ALL VICE PRESIDENTS, DEPARTMENT HEADS, BRANCH MANAGERS—MASSEY-HARRIS DIVISION DISTRIBUTORS—FERGUSON DIVISION"

This exhibit was produced from the files of the Memphis Branch Manager. Nothing could demonstrate more complete integration and disregard of separate corporate entity. It was written before Harry Ferguson, Inc., was merged into the Massey-Harris Company.

The following is an excerpt from stipulated Exhibit

314 B, showing how completely the Limited Company dominated the United States subsidiary:

"MASSEY-HARRIS COMPANY, LIMITED

September 24, 1953

MEMORANDUM

To: Mr. H. H. Bloom—President, *Racine*.

From: Mr. R. H. Metcalfe, Toronto.

Subject:

MASSEY-HARRIS-FERGUSON AGREEMENT

It is of the utmost importance that we fulfill our undertakings under the above Agreement with reference to the manufacture and sale of implements called upon to work with the Ferguson System. The President has accordingly instructed me to draw the attention of Heads of Divisions to these undertakings as set out in Clause 6 of the Agreement, as follows:

* * *

(Signed) R. H. Metcalfe
Vice President
General Administration"

A letter dated October 29, 1954, written by the subsidiary's Sales Manager to its Vice President (App. p. 124b) refers to "our Canadian plants." The writer says he recognizes—"that Our Management did not invite the strikebound situation which exists in *our Toronto Plant.*"

Stipulated Exhibit No. 00072, dated July 20, 1955, is a letter from petitioner's First Vice President, Toronto,

to a Vice President of the subsidiary at Racine, pressing for sales of newly developed implements, and contains the following:

> "* * * I am sure that you are aware of what is required." (App. p. 127b).

Petitioner publishes elaborate and colorful annual reports. The printer has done its best to reproduce pertinent parts of those reports for the years 1953, 1954 and 1955. (Exhs. Nos. 10, 11 & 12 to Bloom, App. pps. 96b-116b). Elaborate references are made to the United States Operation, but not once is it referred to as a subsidiary. It is always referred to as the "UNITED STATES DIVISION." (App. pps. 102b, 110b, 116b). Especial attention is directed to Appendix pages 102b through 103b, where petitioner shows its world-wide operation as a tree and portrays the "UNITED STATES DIVISION" as one of the largest of the branches. One sheet of the 1954 report (App. p. 102b) is headed with petitioner's full name, and under a sub-heading — "United States Division"—all United States factories are listed, and all sales branches, among which is Memphis, Tennessee. Milne, Executive Vice President of the subsidiary, testified that he did not know of any Division that Massey-Harris-Ferguson, Ltd., had in the United States other than Massey-Harris-Ferguson, Inc. (App. p. 78b), and that he did not know of any product engineering that Massey-Harris-Ferguson, Ltd., had in the United States other than Massey-Harris-Ferguson, Inc. (App. p. 78b).

Bloom testified that he was second only to Duncan insofar as the affairs of the Limited Company were concerned, and:

> "* * * I was First Vice President of the Canadian Company and I was President of the United States Division of the Company's operations." (App. p. 2b).

The subsidiary's corporate minutes repeatedly recite that approval of capital expenditures and budgets had to be obtained from the Parent company. Expenditures enumerated in the minutes range from $5,250.00 to $1,182,261.00, and as high as $2,203,311.00). (App. pps. 72b, 73b-75b, 75b-77b).

Klemm, Head of All Engineering for the Western Hemisphere, testified that he made his reports to the Chairman of the Board of Massey-Harris-Ferguson, Ltd. (App. pps. 80b & 11b).

During the twelve-month period prior to September, 1956, petitioner advanced to the subsidiary $5,000,000.00. The subsidiary's Executive Vice President said that the advance was made pursuant to a telephone arrangement; that the subsidiary had advanced money to the Parent; that it had been done in times past, and—"there is nothing abnormal about it." (App. p. 77b).

Evidence Of Anti-Trust Violations and Conspiracy

Respondent fully realizes that this question is one to be decided only on final hearing and by a jury. Plaintiffs contended that the evidence of anti-trust violations and conspiracy which came in as an inseparable part of the evidence on the motion to quash took this case out of the narrow holding actually made in the first part of the opinion in Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333, and brought it within the concept expressed later in that opinion:

> "* * * There is here no attempt to hold the defendant liable for an act or omission of its subsidiary, or to enforce as against the latter a liability of defendant. Hence, cases concerning substantive rights, like Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294; Chicago, etc., Ry. Co. v. Minn. Civic Ass'n, 247 U.S. 490; Gulf Oil Corp. v. Lewellyn, 248 U.S. 71; and U.S. v. LeHigh Valley R.R. Co., 254 U.S. 255, have no application."

and within the rule announced in an unbroken line of authorities holding that parent and subsidiary corporations cannot rely on separate corporate identity when there is evidence of a conspiracy between them and their officials to violate the anti-trust laws. The Cannon case was a simple suit by plaintiff against the parent for breach of the parent's contract with the plaintiff.

Plaintiffs submitted to respondent a long line of cases supporting the principle for which they contended.*

In line with the foregoing plaintiffs contended before respondent that Eastman Kodak v. Southern Photo Materials Co., 273 U.S. 359, and International Shoe Co. v. Washington, 326 U.S. 309, and other cases like them, demonstrate how little is left of the Cannon Manufacturing Company case. Federal Courts are following Inter-

*United States v. LeHigh Valley Ry. Co., 254 U.S. 255; Industrial Research Corp. v. General Motors Corp., 29 F. (2d) 623; Chicago M. & St. Paul Ry. Co. v. Minn. C. & C. Ass'n, 247 U.S. 490; Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294; United States v. Gustav E. Kissell, 218 U.S. 601; Detroit Appliance Company v. GMC (D.C. Ill.), 5 F. Supp. 27; United Chronium v. GMC, 11 F. Supp. 694 (D.C. Conn.); United States v. GMC (7th Cir.), 121 F. (2d) 376; Trustees System v. Payne, 65 F. (2d) 103; Bator v. Boosey & Hawkes, Ltd., (S.D.N.Y.) 80 F. Supp. 294; Pergemont v. Frazer (E.D. Mich.), 93 F. Supp. 9; Central V. Ry. Co. v. S.N.E.R. Corp. (D.C. Mass.), 1 Fed. Supp. 1004; Alexander Young D. Co. v. Nat'l D. Products Corp. (D.C. Penn.), 33 Fed. Supp. 334; Continental Oil Co. v. Jones (D.C. Okla.), 26 Fed. Supp. 694; United States v. Sophony Corp., 333 U.S. 795; Ross-Bart Port Theatre, Inc., v. Eagle Lion Films, Inc., et al (D.C.E.D. Va.), 140 Fed. Supp. 401.

national Shoe Co. and holding that transacting business in a State by a foreign corporation through a contract with another corporation sufficiently meets the requirements of due process when service is had upon officers

There is in the record evidence supporting substantial- or agents of the contractee corporation.* If petitioner's contention is correct the foreign corporation could insulate itself by acquiring all the stock of the contractee corporation.

ly all the allegations in the complaint. The complaint is copied in petitioner's appendix, pages 22a-38a. The evidence is adequate to make a prima facie case of conspiracy and anti-trust violations. There is much more than was before the Court in Ross-Bart Port Theatre, Inc., v. Eagle Films, Inc., D.C.E.D. Va., 140 Fed. Supp. 401, which reviews the opinions of this Court on the question and supports plaintiffs' contention as just above stated.

It is believed that the evidence set forth under the foregoing headings and in the appendix is sufficient to render plaintiffs' contention here stated cumulative. Believing that plaintiffs were and are entitled to rely upon the contention stated under this heading, a narrative of that evidence is incorporated in the appendix (App. pps. 139b-147b), without encumbering this brief or the appendix with the testimony, and documentary evidence supporting it, leaving to petitioner the job of challenging the narrative in any way it can. Petitioner has not yet challenged or denied any of that evidence. Substantially all of it came from the testimony of petitioner's officials and documents produced from the files of its subsidiary,

*Scholnik v. National Airlines (6th Cir.), 219 F. (2d) 415; Clover Leaf Freight Lines v. Pacific Coast Wholesalers Ass'n. (7th Cir.), 166 F. (2d) 626; Consolidated Cosmetics v. D-A Pub. Co. (7th Cir.), 186 F. (2d) 906.

CONCLUSION.

An interlocutory order, made within the admitted scope of the Court's jurisdiction, upon a question of fact, either upon conflicting evidence or upon undisputed evidence sustaining the order, will not be reviewed and reversed on petition for mandamus.*

It is fair to ask the Court to consider all of the foregoing and everything in the appendix in the light of petitioner's admission:

> "The facts upon which the District Court relied in asserting jurisdiction were conceded by the petitioner." (Petition, p. 19).

Respectfully submitted

Lowell W. Taylor,
Counsel for Respondent,
Hon. Marion Speed Boyd.

Of Counsel:
William A. Percy.

*U.S. v. Byers (2d Cir.), 144 F. (2d) 455; American Airlines v. Forman (3rd Cir.), 204 F. (2d) 230; In Re: Eastman Kodak Co. (3rd Cir.), 48 F. (2d) 125; Pennsylvania Turnpike Co. v. Welsh (3rd Cir.), 188 F. (2d) 447; Petition of Therianos (3rd Cir.), 171 F. (2d) 886; Hazeltine v. Kirkpatrick (3rd Cir.), 165 F. (2d) 683; Hyman v. McLindon (4th Cir.), 103 F. (2d) 294; Sunbeam Corp. v. Picard (6th Cir.), 227 F. (2d) 596; Comfort Equipment Co. v. Steckler (7th Cir.), 212 F. (2d) 371; Dairy Industries Supply Ass'n v. La Buy (7th Cir.), 207 F. (2d) 554; Sound Investment Co. v. Harper (8th Cir.), 178 F. (2d) 274; Shaheen v. Shriver (9th Cir.), 221 F. (2d) 715; Hydraulic Press Mfg. Co. v. Moore (8th Cir.), 185 F. (2d) 800; State of California v. U.S. District Court (9th Cir.), 213 F. (2d) 818; Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680; Roche v. Evaporated Milk Ass'n, 319 U.S. 21; Bankers Life and Casualty Co. v. Holland, 346 U.S. 379; Direct Transit Lines, Inc., v. Hon. Raymond W. Starr (6th Cir.), 219 F. (2d) 699.

AUG 22 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM—1957

No. 248

MASSEY-HARRIS-FERGUSON, LIMITED

Petitioner,

vs.

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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TOOF MEMPHIS

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Stip. Exh. 831-833	134b-139b
Evidence of Anti-Trust Violations	139b-147b
Exh. 1F—Klemm	141b
Stip. Exh. 00144	141b-142b
Exh. 1E—Klemm	142b-143b
Exh. 3—Klemm	143b-144b
Exh. 2—Klemm	144b
Stip. Exh. 311A-C	145b
Stip. Exh. 204	145b
Exh. 14A-N—Bloom	145b-146b
Stip. Exh. 297A-B	146b
Stip. Exh. 392	147b

PROCESSES SERVED.

"I received the within summons and Complaint and executed same by going to 1332 Louisiana, Memphis, Tennessee, and handing a true copy of this return to Mr. V. N. Detling, Assistant Branch Manager for the Massey-Harris-Ferguson, Inc., and Massey-Harris-Ferguson, Ltd., in Memphis, Tennessee, *who accepted service for the above named companies* this 21st day of August, 1956, at 3:50 P.M." (Filed in Memphis August 22, 1956).

* * *

"I received the within summons together with the Complaint and executed this return at Detroit, Michigan, August 27, 1956. I served the within named Massey-Harris-Ferguson, Ltd., by giving a copy of this summons together with the Complaint to Mr. H. G. Klemm, Vice-President of the within named Massey-Harris-Ferguson, Ltd., at Detroit, Michigan." (Filed in Memphis September 4, 1956).

ALL FERGUSON BUSINESS IN WEST TENNESSEE CONDUCTED BY LIMITED COMPANY.

H. H. Bloom

The following from the testimony of H. H. Bloom:

"Q. In June, July and August, 1953, insofar as official capacity and voice in management was concerned, you were second only to Mr. Duncan insofar as the affairs of the Massey-Harris Company, Ltd., were concerned, is that right?

A. That's right." (Tr. p. 207).

* * *

"Q. Your title in those months in 1953 with Massey-Harris Company, Ltd., was first vice president, United States Division, was it?

A. Yes, that's right; that was set up in two ways; there were two titles, I was first vice president of the Canadian Company and I was president of the United States *Division of the company's operations.*" (Tr. pps. 206-207).

* * *

In response to questions as to how the business of Harry Ferguson, Inc., was to be operated after amalgamation, Bloom testified:

"* * * That was my problem, I was directly responsible for the United States operations, and my problems were confined to bringing about the amalgamation in the United States, and I had a series of meetings here with my associates to discuss the approaches as to how a more practical way to do

H. H. Bloom

it was; that was prior to going to Detroit to actually put the matter over, to start the consolidation of the two companies." (Tr. pps. 212-213).

* * *

"A. As a matter of clarification, I would like to clear up this point. You will notice that these letters are signed First Vice President, Massey-Harris Company, Ltd., the reason for that being that at the time that these letters were signed First Vice President, Massey-Harris Company, Ltd., the merger of the American Company, Massey-Harris and Ferguson, Inc., had not taken place; that is, they operated and were required to operate as two separate companies.

Q. It hadn't become a reality?

A. No, and therefore as president of the American Company I had no jurisdiction in going into Ferguson, Inc., and these negotiations which were carried out at that time were carried out in my capacity as first vice president of the Parent Company.

Q. And by virtue of the authority you had in that capacity?

A. That's right, yes, sir." (Tr. pps. 223-224).

* * *

"Q. And from August 16, 1953 to September 1, 1954, no person who was an officer of Harry Ferguson, Inc., was an officer of the Massey-Harris Company, was there?

H. H. Bloom

A. I think that is correct, Mr. Taylor. (Tr. p. 124).

* * *

"Q. Will your look at this photostat of Exhibit Nos. 8-A, 8-B and 8-C to Haggard's deposition and tell us whether or not Exhibit 8-B was mailed to all of the addresses shown on it over your signature, and whether you received Exhibit 8-A?

A. Yes, in both cases: they were mailed and I recognize the reply." (Tr. p. 233).

The following is an excerpt from Exhibit 8-C:

"Amalgamation of Ferguson and Massey-Harris will provide an impressive net of manufacturing facilities extending all over the World, including France and the United States at Detroit, Racine, Batavia and Fowler, California; plus others in Canada, England, Scotland, South Africa, France and Germany."

* * *

"Q. Now, one of the first matters that came before you for your consideration of real importance I take it was what the attitude would be with respect to the Ferguson distributors, wasn't it?

A. Well, that was a matter of importance, yes; the Ferguson management was existent at that time, that's right." (Tr. p. 214).

* * *

"Q. And that was one of the responsibilities resting with you?

H. H. Bloom

A. That's right." (Tr. p. 215).

* * *

"Q. Now, when you went to Detroit shortly following the amalgamation, it was necessary for you to go there for a rather considerable period of time, wasn't it?

A. That's right, yes." (Tr. p. 216).

* * *

"Q. Now, then, did you send Mr. Curry Stoup and some of the other officers of the Massey-Harris Company and Harry Ferguson, Inc., to see distributors and discuss the problems with them?

A. Yes, that's right, I think there were two teams.

Q. And who was on each of those teams?

A. Mr. Sweeney, and I think Mr. Milligan was on one team, and it was either Mr. Sweeney and Mr. Stoup or Mr. Sweeney and Mr. Milligan; and then there was Mr. Spicer and then it was either Mr. Milligan or Mr. Stoup; I think those were the four. There was one Massey-Harris man and one Ferguson man; there was a team of the two." (Tr. pps. 220-221).

* * *

"Q. And I guess part of the instructions you gave these two teams was to advise the distributors of what your future policy would be with respect to marketing of the lines and so forth?

A. That's right.

Q. But even then there was considerable concern among some of the distributors as to what their position was?

A. Well, yes, there was; of course, there always is in a great merger such as this; it was the largest implement merger that had taken place in the United States; it is bound to have had a certain amount of uncertainty connected with it." (Tr. pps. 221-222).

* * *

"Q. And you have seen this letter over the signature of Mr. Curry W. Stoup, October 7, 1952, addressed to all Ferguson distributors and branches, with attachments; will you tell us whether that was sent, mailed at your direction?

A. It was mailed with my agreement, that's right.

Q. It was mailed at your direction?

A. That's right." (Tr. pps. 222-223).

* * *

"Q. I hand you letters dated August 16, 1953, August 28, 1953; September 3, 1953 and September 10, 1953 on the stationery of Harry Ferguson, Inc., over the signature of Curry W. Stoup and ask you to examine them, please, and state into the record whether those letters were sent to the persons to whom they were addressed, pursuant to your instruction?

A. That's right.

Q. Will you make that collective Exhibit No. 5-A through 5-E inclusive?

A. Yes, sir." (Tr. p. 227).

* * *

"Q. I hand you two documents which appear to be form letters on the stationery of Harry Ferguson, Inc., both bearing date of November 16, 1953, and ask you to state whether those letters were prepared and mailed pursuant to your directions and with your approval?

A. They were mailed with my approval.

Q. Make them Exhibits Nos. 7-A, 7-B and 7-C?

A. All right." (Tr. p. 232).

* * *

"Q. Did you authorize the production and marketing of the MH-50 tractor?

A. Did I; yes, I did." (Tr. p. 243).

* * *

"Q. Did you transfer Mr. C. E. Krause from Racine to Detroit in the fall of 1953 when Mr. D'Angelo resigned?

A. I did.

Q. And was he put in charge of the Detroit operation as manager?

H. H. Bloom

A. As general manager, yes." (Tr. p. 250).

* * *

"Q. Mr. Bloom, in the period following amalgamation in August, 1953, did you from time to time require Mr. J. L. Hooker to work part-time in Racine?

A. Oh, yes, I expect so; he was transferred to Racine because we were in the process of transferring the entire administrative operation to our Racine head office, the proposed head office of the American Company.

Q. When did you transfer Mr. Hooker to Racine?

A. Why, I don't recall the date, but we can get it.

Q. Not exactly, but it was not too long after the August 1953 amalgamation?

A. Yes, we transferred the sales department and the supplies department and the accounting department to Racine within a matter of six months after the amalgamation; yes, after the amalgamation, but actually prior to the merger of the two companies in the United States." (Tr. pps. 264-265).

* * *

"Q. Will you look at Stipulated Exhibits Nos. 00072 and 00073 and tell us whether you wrote the original of that?

A. Yes, I wrote this from Toronto in my capacity as first vice president at the time I was stationed there, this was after the time I moved from

the United States and established headquarters in Toronto.

Q. And look at Stipulated Exhibits Nos. 00080 and 00081 and tell us whether that is the same situation?

A. Yes, it again was written after my transfer to Canada and I was first vice president, responsible for North American operations, and it dealt with the problem of production of a Canadian machine in the Canadian plant, and sales outlets in the different countries.

Q. Now, Mr. Bloom, Stipulated Exhibits Nos. 00072, 00073, 00080, 00081, and 00075 and 00076 exemplify your jurisdiction over the United States operations and the manner in which you exercised that authority; do they not?

A. I would say it would come—, the subject matters of these letters came within the sphere of my responsibility as being in charge of North American—, responsible for North American operations, in that they affected the sales volume or acceptance of machines in the field; the surveys requested were of importance and interest to the various companies, and had a direct bearing on our potential sales results.

Q. Mr. Bloom, insofar as the over-all operations of Massey-Harris-Ferguson, Ltd., is concerned, including North America and Canadian and United States divisions, you were second only to Mr. Duncan in authority, weren't you?

A. Yes, sir." (Tr. pps. 266-267).

* * *

H. H. Bloom

Bloom says the news release (Exh. 4 to Bloom); 8/16/53, was checked by him and Duncan and Ferguson, and sent out with the approval and authority of Duncan, Ferguson and Bloom. It was sent to Memphis Branch and Memphis distributors. (Tr. p. 226). *This is important because it contains evidence of the incipiency of the conspiracy and ties in the Canadian Company as conspirator to contacts within respondent's judicial district.* It contains the following:

> "During the past 10 years Mr. Ferguson and his skilled staff in Britain and the United States have been working in the greatest secrecy on many new machines. The Massey-Harris directors had full knowledge of the success of the Ferguson System in the past throughout the world but it was only after *a complete disclosure* of all the new inventions and a full investigation of new patents and applications for patents to give world-wide protection for a multitude of new inventions that they decided to make an offer to join forces with Ferguson. *The two organizations are complementary rather than competitive* and their coming together is expected to result in a great expansion of their operations and a further increase of both Ferguson and Massey-Harris exports from the United Kingdom." (Exh. 4 to Bloom).

And:

> "The name 'Ferguson' will continue to be carried on the tractors and implements of Ferguson design." (Exh. 4 to Bloom).

* * *

H. H. Bloom

Exhibit 9 to Bloom. This announced the Ferguson retail finance plan. It is dated 8/2/54, and addressed to all United States Distributors. Bloom said it was sent out with his approval. (Tr. pps. 240-241). He says that the finance plan for Ferguson distributors and dealers was prepared under his supervision and direction. (Tr. p. 241).

* * *

With respect to stipulated Exhibits 4-5, H. H. Bloom testified:

> "Q. And in connection with that, you utilized the services of Mr. Herman G. Klemm?
>
> A. Yes, he was Vice President of engineering and responsible for the engineering of both the Massey-Harris and Ferguson division lines." (Tr. p. 260-Bloom).

* * *

J. L. Hooker

J. L. Hooker's testimony, transcript pps. 299-300:

"Q. Prior to August 16, 1953, and from August 16, 1953 to September 1, 1954, Harry Ferguson, Inc., had representatives who went to Memphis at more or less regular times to transact business on behalf of that company?

A. Yes, sir, regional personnel.

Q. Regional personnel; among those were Mr. Boardman?

A. Yes, sir.

Q. Who else?

A. Mr. Le Queux and—

Q. Well, that is enough.

A. There is a chap who represented us in product education prior to August 16, 1953, and I can't remember his name.

Q. That is all right; Mr. Boardman and Mr. LeQueux made their trips to Memphis regularly, and there transacted business of Harry Ferguson, Inc., as representatives of that company, didn't they?

A. Yes, sir.

Q. And Mr. Boardman has continued right on doing the same thing since September 1, 1954?

A. Yes, sir; Broadway was the other name I was trying to think of, and—."

H. H. Bloom

The following is exhibit 3 to Bloom. Bloom admits he caused it to be sent.

COPY
WESTERN
UNION

1953 Aug 16 PM 6:30

Howard Sullins:

467 Williamsburg Rd Mfs: (Tennessee)
News released this afternoon states in part quote It has been jointly announced by James S Duncan, president of the Massey-Harris Company Ltd, on behalf of its board of directors and by Harry Ferguson, chairman of the Harry Ferguson Companies, that the two worldwide organizations which they represent have agreed to amalgamate and to operate in the future under the name of Massey-Harris-Ferguson Ltd unquote Mailing full copy news release to all dealers today also copy dealer letter and news release airmailed to you. Plan make detailed study of distribution problem with view to developing plans for franchise. Will continue to operate under present franchise provided such operation is given increased distributing of both Ferguson and Massey-Harris products. As soon as possible will have individual meeting each distributor. Meantime carry on as usual. Plan no precipitous action but to proceed slowly and carefully with utmost consideration and fair treatment. Time element and uncertainty reaching you today by phone made telegraphing seem advisable. Will be glad give you full details of release tomorrow if you desire to phone.
Harry Ferguson, Inc.
C. W. Stoup

H. H. Bloom

Exhibit 2C—Bloom:

MASSEY-HARRIS COMPANY

Limited

Head Office Toronto 3, Canada

October 2, 1953

(Addressed to all Ferguson Dealers.)

Gentlemen:

YOUR PART IN THE FUTURE

It has come to my attention that there are many false rumors being spread among the Ferguson dealer organization about the future of Ferguson dealers, as a result of the recently announced intent to amalgamate the worldwide Ferguson interests with Massey-Harris, Limited, into a new company, Massey-Harris-Ferguson, Limited.

Always, when all facts are not fully understood, such rumors can find fertile grounds in which to grow, even beyond the concept of the ones who start them. This is understandable, and it is for this reason that I have taken the liberty of writing to you at this time.

We who will be responsible for the management of the parent Massey-Harris-Ferguson, Limited, company want to give you assurance (in addition to that contained in Mr. Stoup's letters of August 16th and August 28th) that this strengthening of both organizations will have nothing but the best of results for both the present Massey-Harris and the Ferguson dealer organization.

It is not our intent to eliminate any Ferguson or Massey-Harris dealer who is performing satisfactorily. *I feel certain you will understand this when you realize*

H. H. Bloom

that the Massey-Harris and Ferguson interests were attracted to each other because it was felt that both could contribute greatly to a new parent organization—not only because of the financial strength, progressive engineering and manufacturing facilities of both organizations, but also because of the aggressive dealer sales organizations of each throughout the world.

That is why there will continue to be a separate Ferguson dealer franchise and a separate Massey-Harris dealer franchise; each with its own terms and discounts. Also, it is why there will continue to be a Ferguson line of products and a Massey-Harris line of products, and why each line will be developed to best serve the farmers in every area not only of the United States, but also of the world.

Surely, your future as an aggressive Ferguson dealer is made even more promising as a result of being a part of what will be one of the largest farm equipment organizations in the world.

Very truly yours,

MASSEY-HARRIS COMPANY, LIMITED
/ss/ H. H. Bloom
First Vice President

Exhibit 2B—Bloom:

Attachment to letter
of October 2, 1953

YOUR FERGUSON DISTRIBUTOR'S PLACE IN THE PICTURE

In addition to clarifying the future of Ferguson Dealers in the distribution of Ferguson products, I believe it also is well to reconfirm that definite arrangements have

H. H. Bloom

been completed whereby (Distributor's name) will continue as your Authorized Ferguson Distributor.

In some areas we have placed the distribution of Ferguson products in a special Ferguson Division of our Branches. Because of past satisfactory performance and other considerations, however, it is our intention to continue the distribution of Ferguson equipment through (Distributor's name):

In our opinion, it is basic that the distribution of Ferguson products continue the same pattern that was in existence before the announcement was made of the intent *to amalgamate the Ferguson interests and Massey-Harris Company, Ltd., into the new parent company, Massey-Harris-Ferguson, Ltd.*

It is because of this that there is absolutely no reason why any Dealer holding a Ferguson franchise should hesitate, in any way, to do business in the normal manner now and in the foreseeable future with their present Ferguson Distributor.

MASSEY-HARRIS COMPANY, LIMITED

H. H. Bloom
First Vice President

H. H. Bloom

Exhibit 2A—Bloom:

HARRY FERGUSON, INC.

Detroit 32, Michigan

Cables: "Farming" Telephone: Walnut 3-3600

TO ALL FERGUSON DISTRIBUTORS
AND BRANCHES October 7, 1953

Gentlemen:

Because several of our Distributors have called in about false rumors being spread among our Dealers, Mr. Bloom felt it advisable that he personally address a letter to each Dealer assuring him of his future as a member of the Massey-Harris-Ferguson, Ltd. family. The attached letter is being mailed to all of your Dealers today.

In addition, an addendum is being attached to those letters addressed to areas where the Ferguson Distributor will continue the distribution of Ferguson products. The purpose of this, as you will see, is to reassure the Dealers that they are to continue to deal with the Ferguson Distributor and that it is not the intent that these Distributors will shortly be replaced by branch house operations.

Very truly yours,

HARRY FERGUSON, INC.

/ss/ Curry W. Stoup
Vice President and
General Sales Manager

CWS:fa
nm
Enc.

H. H. Bloom

H. H. Bloom's testimony, transcript p. 227:

"Q. I hand you letters dated August 16, 1953, August 28, 1953, September 3, 1953 and September 10, 1953 on the stationery of Harry Ferguson, Inc., over the signature of Curry W. Stoup and ask you to examine them, please, and state into the record whether those letters were sent to the persons to whom they were addressed, pursuant to your instruction?

A. That's right.

Q. Will you make that collective Exhibit No. 5-A through 5-E inclusive?

A. Yes, sir."

* * *

Exhibit 5A to Bloom

HARRY FERGUSON, INC.

Detroit 32, Michigan

Cables: "Farming" Telephone: Walnut 3-3600

August 16, 1953

TO ALL U.S. AND CANADIAN DEALERS

Gentlemen:

We are pleased to attach hereto copy of the official news release announcing the world-wide association of Massey-Harris and the Ferguson Companies, an event which we are confident will bring to the sales outlets of the new organization opportunities for greater volume

and a more advantageous competitive position than ever before.

The bringing together of the manufacturing facilities located in various parts of the world, supported by the research and engineering organizations of these two leading builders of quality farm equipment of advanced design, coupled with its plans for new and improved lines in the future, merits confidence that the products of Massey-Harris-Ferguson will continue to gain ever increasing consumer acceptance, also that our company will enjoy an evermore enviable position in the trade.

Plans for the future sale and distribution of the company's products are most flexible in that there will continue to be two distinct dealer contracts:

Franchise covering Massey-Harris Tractors, combines and equipment.

Franchise covering Ferguson System Tractors and Ferguson related equipment.

Dealers now holding either a Massey-Harris or Ferguson franchise will continue to operate under the same, provided, of course, that such operation is giving the products adequate territory representation and that the general conditions of the contract are being fulfilled.

In order further to increase the distribution of all product lines, applications for contracts from present holders of either a Massey-Harris or Ferguson franchise will be given preferential consideration in places where both lines are not already represented.

In trading centers where no representation exists at present, dealer applications for either or both contract lines will be welcomed.

H. H. Bloom.

We are now in the midst of the important fall selling season and it is our confident hope that you, as our Dealer, will go forward with enthusiasm and determination to secure an even greater share of the available business than ever before.

Very truly yours,

HARRY FERGUSON, INC.

/ss/ Curry W. Stoup
Vice President and
General Sales Manager

Exhibit 5B and 5C to Bloom

HARRY FERGUSON, INC.

Detroit 32, Michigan

Cables: "Farming" Telephone: Walnut 3-3600

TO ALL U. S. DEALERS. August 28, 1953

Gentlemen:

MASSEY-HARRIS-FERGUSON AMALGAMATION

Since writing you last week, we know that there must be many questions in your minds with regard to your future operations. We want to reassure you that it will be our constant endeavor to keep you fully informed as the amalgamation details are finalized.

There is very little additional information which we can pass on to you since our letter of August 16. However, we want to re-emphasize one very important point, since it is pertinent to your future:

H. H. Bloom

There will continue to be Ferguson Tractors and Ferguson System Implements bearing the Ferguson name; and there will continue to be Massey-Harris Tractors and Equipment bearing the Massey-Harris name. There will be a separate franchise covering each line . . . the Ferguson line will continue to be sold under present Ferguson terms and discounts and the Massey-Harris line under their present basis of terms and discounts.

Ferguson Dealers now holding our franchise will continue to operate *as in the past provided, of course, that such operation is giving the Ferguson line adequate territory representation and that the general conditions of the franchise are being complied with.*

Every effort will be made to give you the opportunity for expanding your business by adding the Massey-Harris franchise, on the basis of the above provisions, if you are so located that it would be advisable. For example, if there is a Massey-Harris Dealer currently and adequately covering your territory, naturally the Massey-Harris Dealer will continue to handle that line.

If you, as a Ferguson Dealer, believe that you are so located and so equipped to seriously consider the addition of the Massey-Harris franchise to your business, we would strongly suggest that you make an informal application to us immediately. Inasmuch as distribution details will require considerable study so that the most sound method will be adopted, will you please mail such applications directly to:

Mr. Curry W. Stoup
Vice Pres. and General Sales Mgr.
Harry Ferguson, Inc.,
Box 322
Roosevelt Park Annex Station
Detroit 32, Michigan

H. H. Bloom

Since the announcement of the agreement to amalgamate our Company and the Massey-Harris Company, we have had many requests for information. If you would like specific information regarding Massey-Harris Equipment, franchise, policies, and similar matters, please do not hesitate to write us. We will have a Massey-Harris representative call on you to discuss any of your questions concerning their line.

Because of the many things that Ferguson has to offer Massey-Harris, and because of the many things which Massey-Harris has to offer all of u , we know you will agree that this great, new Company, *Massey-Harris-Ferguson*, can mean only one thing . . . a brighter future for all.

Very truly yours,

HARRY FERGUSON, INC.

/ss/ Curry W. Stoup
Vice President and
General Sales Manager

CWS:fa
mm

* * *

Exhibit 5D to Bloom

HARRY FERGUSON, INC.

Detroit 32, Michigan

Cables: "Farming" Telephone: Walnut 3-3600

September 3, 1953

H. H. Bloom

TO ALL U. S. AND CANADIAN DEALERS

Gentlemen:

MASSEY-HARRIS-FERGUSON AMALGAMATION

Undoubtedly many of your owners have asked you about our future plans for distribution . . . whether or not there will continue to be Ferguson Tractors and Equipment, and whether or not Ferguson Dealers would continue to sell and service Ferguson Equipment.

The answer is, yes, there definitely will continue to be Ferguson Tractors and Implements!

You can tell your customers that the real reason behind this amalgamation of Massey-Harris and Ferguson is to provide an even greater service to all farmers in bringing them a broader line of equipment to do all farm work more efficiently and more economically. Therefore . . .

1. There will continue to be Ferguson Tractors and Ferguson System Implements bearing the Ferguson name.

2. There will continue to be Massey-Harris Tractors and Equipment bearing the Massey-Harris name.

3. There will continue to be Dealers handling the sales and service of Ferguson Tractors and Ferguson System Implements.

4. There will continue to be Dealers handling the sales and service of Massey-Harris Tractors and Equipment.

These facts make the picture clear that the sales and

service facilities will be increased for all farmers and most certainly not decreased.

We will consider your continued support as a valuable link in this chain of expanded operations to serve the American farmer.

Very truly yours,

HARRY FERGUSON, INC.
/ss/ Curry W. Stoup
Vice President and
General Sales Manager

CWS:rm

* * *

Exhibit 5E to Bloom

HARRY FERGUSON, INC.

Detroit 32, Michigan

Cables: "Farming" Telephone: Walnut 3-3600

September 10, 1953

TO ALL DEALERS OF
SOUTHLAND TRACTORS, INC.

Gentlemen:

MASSEY-HARRIS-FERGUSON AMALGAMATION

We are pleased to advise you that Mr. H. H. Sullins of Southland Tractors, Inc., has met with officials of Harry Ferguson, Inc., and The Massey-Harris Company. It was mutually agreed that Southland Tractors, Inc. will continue to distribute Ferguson tractors and implements

H. H. Bloom

on the same basis and under the same terms as heretofore.

Knowing that all Ferguson Dealers are deeply interested as to how the Ferguson tractors and implements are to be distributed due to the amalgamation, it is particularly gratifying to us to make this announcement that Southland Tractors, Inc. will continue to work with you as they have so well done in the past.

Your Distributor will discuss with you in the near future the expanded opportunities which will result from the formation of our great new Company . . . Massey-Harris-Ferguson.

Very truly yours,

/ss/ HARRY FERGUSON, INC.

Curry W. Stoup
Vice President and
General Sales Manager

CWS:fa
lg

* * *

H. H. Bloom

The following is exhibit 1 to Bloom's testimony:

Copy

WESTERN
UNION

53 OCT 7 DETROIT MICH

HOWARD SULLINS

Southland Tractors Inc. 404 E Mallory Memphis Tenn —we understand that there are false rumors in your territory about your future status as the distributor of

H. H. Bloom

the Ferguson line stop This is to confirm to you that Southland Tractors, Inc is and it is our intention that you will continue to serve as the distributor of the Ferguson products in your territory stop Above being confirmed by direct letter to all your dealers—H. H. BLOOM FIRST VICE PRESIDENT MASSEY-HARRIS CO LTD—

H. H. Bloom

Stipulated Exhibit 298.

MASSEY-HARRIS COMPANY
Limited

Head Office, Toronto, Canada

James S. Duncan, Chairman and President

November 3rd, 1953.

Mr. H. H. Bloom,
President,
Massey-Harris-Ferguson, Inc.,
Racine, Wisconsin.

Dear Mr. Bloom,

Please discuss with me on Wednesday, the desirability of making a visit once again to all the Ferguson distributors. I must say that the more I think of it, the more I am concerned over these people becoming discouraged or becoming a prey to Ford, either directly or by Ford taking over their principal agents. It may be necessary for us to give them some further security as to the duration of their contract.

My chief cause for worry, at the present time, is the further delay in the big tractor, which will prove to be a

H. H. Bloom

great disappointment to them, and furthermore, if we decide to delay the situation as we have discussed, the fact that they will not have a combine or a baler to offer for at least a year later than they expected.

Just as soon as we can come out with the new TO-33, I think we will have the situation well in hand, but, obviously, we cannot say anything about this until we are ready to supply the machines and, therefore, it appears to me more and more as I think it over that we are up against a really tough proposition for the next 12 months, and it may be necessary for us to go beyond what we had originally felt was necessary, in order to keep the organization tied to us until we have some encouraging news to give them.

Yours very sincerely,

J. S. Duncan
President

J.S.D.:on

* * *

H. H. Bloom

The following from Exhibit 13-G to Bloom:

COPY

"HARRY FERGUSON, INC.
Detroit 32, Michigan

March 25, 1954

TO ALL FERGUSON DISTRIBUTORS:
FERGUSON CONFERENCE AT RACINE

* * *

At this Conference, the election of Mr. Herman G. Kheinm as Vice President *in charge of all Ferguson and*

Massey-Harris engineering in North America was announced. This, we feel, is very important and will ensure not only a continuation of the high quality of engineering that has given Ferguson products such advanced design and great efficiency in the past, but will also extend its scope much to the benefit of Ferguson Distributors, Dealers, and Customers throughout the world.

* * *

HARRY FERGUSON, INC.

(Signed) C. E. Krause
General Manager"

* * *

H. H. Bloom's testimony:

"Q. This Exhibit Nos. 311-A, 311-B and 311-C recites that the meeting was in Mr. Duncan's office; was that in his office in Toronto?

A. That was in his office at Toronto, yes; you notice, it deals with both the Canadian problem and the United States problem, and designates the responsibility of the Canadian problem as Mr. Burgess, who was general manager for the Canadian division; it is on Page 3, I think, and with respect to the United States, *it was my responsibility to carry it out.*

Q. And these decisions reflected in these minutes were made as shown by this exhibit?

A. Well, that was the conclusion of the discussions we had, yes, the action to be taken.

Q. And the gentlemen who attended those meetings as shown by the minutes, made these decisions?

H. H. Bloom

A. The decisions, I would say were made by Mr. Duncan and myself, because we were the two executive officers, but we did have the benefit of the opinions of the men who were there.

Q. I show you what purports to be a copy of a telegram dated August 16, 1953, addressed to Mr. Howard Sullins, signed Harry Ferguson, Inc., C. W. Stoup, and I will ask you to read that and tell us whether or not the original of that telegram was prepared to be sent to all of the distributors who were to be retained.

A. This telegram as I recall it is basically what I recall having sent, in which we outlined that we were going to undertake a detailed study of distribution problems.

Q. At that time, Mr. Stoup was working under your jurisdiction, and that I am sure was typical of a telegram sent to the rest of the distributors?

A. Yes, I would say so; I would say that is right.

Q. Pursuant to your direction?

A. Yes, I would say that is right, authorized by me." (Tr. pps. 224-225—Bloom).

(Stipulated Exhibit 311)

AMALGAMATION PROBLEMS

Minutes of meeting held in Mr. Duncan's office, Sept. 21, 1953 at 3:00 p.m. Present were: Messrs. Duncan, Tory, Appleton, Bloom, Burgess, E. H. Metcalfe, and R. H. Metcalfe.

PROBLEM: H. F. Inc. Executive Profit Sharing Plan.

H. H. Bloom

DECISION:

(a) Notice of intention to terminate this plan must be given to H. F. Inc. executives before Dec. 31, 1953. It should be brought before the Board of M-H Co.

Action: Mr. Appleton

(b) For the purpose of this plan, 1953 profit of H. F. Inc. will be calculated on the normal operations of the company, disregarding any special adjustments made at the request of M-H Co. (e.g. repurchase of inventory from distributors which would affect profits.)

PROBLEM: Consolidation of U. K. and North American operations.

The acquiring of the British Ferguson interests would appear to make it desirable to reconsider our present basis of publishing our results on a North American basis, in order to reflect the revised volume and earnings of the M-H-F organization.

DECISION: Consolidation of the U.K. and North American operations to be effected, if possible. Messrs. R. H. Metcalfe and E. H. Metcalfe to study the situation and prepare a recommendation for consideration by the Board.

Action: Messrs R. H. Metcalfe and E. H. Metcalfe

PROBLEM: Termination of the H. F. Inc. Pension and Insurance Plan.

This is an insured, non-contributory plan with full and immediate vestin of rights. The benefit to the individual is greater under the H. F. Inc. Plan over a short term, but is less favourable than the M-H Plan for service in excess of 20 years.

H. H. Bloom

DECISION:

(a) this plan is to be terminated on Dec. 31, 1953; provided satisfactory arrangements can be made with the Insurance Co. to cover the period October 1-Dec. 31.

DECISION:

(b) H. F. Inc. employees who become M-H employees will receive their vested rights under the H. F. Inc. Plan and will then enter the M-H Plan as new employees.

(c) Mr. Appleton is to visit H. F. Inc. this week to review the situation, to make suitable arrangements to terminate the plan, and to prepare suitable publicity for convincing H. F. Inc. employees of the advantages of coming into the M-H plan.

Action: Mr. Appleton

PROBLEM:

Length of notice to H. F. Inc. employees re termination of employment.

DECISION:

A study of local practice is to be made and this practice is to be followed, leaning to the generous side.

Action: Mr. Bloom

PROBLEM:

Questions arising re Corporate Consolidation of H. F. Inc. and the M-H Co.

H. H. Bloom

After consultation by telephone with Mr. Sonnett (Mr. Ferguson's Solicitor) Mr. Tory advised that no steps be taken at this time to merge these two companies. After Dec. 31, 1953 the situation can be reviewed in relation to anti-trust and anti-merger legislation and in the light of government policy.

DECISION:

(a) all Ferguson employees who work for the M-H organization (Canada and U. S.) are to remain on the payroll of H. F. Inc.

(b) former employees of Ferguson Distributors who are taken into the M-H organization should go on the M-H payroll.

(c) M-H Branches who take over from Ferguson Distributors are to be appointed as distributors of H. F. Inc.

The basis of handling the stocks taken over is to be reviewed further, but this should be done in such a way as to facilitate the writing down to cost of these goods and their treatment as sales in 1954, if disposed of after Oct. 31. It was suggested that this might be accomplished by taking over the goods on consignment.

DECISION:

(d) Trade marks will remain unchanged (Canada and U. S.) Name plates and signs remain unchanged in the U. S., but changed in Canada after Oct. 31. (existing stocks to be used up).

(e) Mr. Bloom to discuss personnel matters with H. F. Inc. personnel but any formal actions (e. g. notice of dismissal) to be taken through the H. F. Inc. Management.

H. H. Bloom

Action: Messrs. Bloom and Burgess where appropriate.

PROBLEM: Ferguson machines.

DECISION:

(a) the costing of the large U. S. Ferguson (gas) tractor to be undertaken as soon as possible.

Racine to advise U. K. re equipment to be included on the tractor.

(b) the new tractor and other new machines should be given a thorough testing by H. F. Inc. and the M-H Co.

(c) price study to be made of the large Ferguson tractor (gas and diesel.)

Action: Mr. Bloom

(End of Stipulated Exhibits A, B & C)

* * *

The following letter was recently put into pretrial record by defendants' Counsel:

Document No. 3164 (Memphis):

MASSEY-HARRIS COMPANY
Limited

Market Street, Brantford, Canada

March 25, 1955

H. H. Bloom

Southland Tractor Inc.
464 East Mallory
Memphis, Tenn.

Gentlemen:

After shipping your order of fifty FEO 20 Mowers, we discovered a shortage of two nuts and two washers in the hardware bag. Therefore, you will receive, by express, the amount required to overtake this shortage.

Yours truly,

/ss/ C. Drury
Chief Inspector

CD:s

LIMITED COMPANY'S DIRECT USE OF MEMPHIS BRANCH

C. R. Haggard

With respect to the Limited Company's President and Chairman of the Board dealings with the Memphis Branch, the Memphis Branch Manager testified:

Q. All right; let us call them discussions or suggestions made by the Chairman of the Board and President of Massey-Harris-Ferguson, Ltd.; now, what suggestions did that gentleman make?

A. Relative to what?

Q. Well, any operations in connection with the Memphis branch.

A. Well, he suggested that we get together with the Ferguson Regional Manager, Mr. Boardman.

C. R. Haggard

Q. And do what?

A. And call on the various distributors that were affected in our territories.

Q. Various distributors?

A. Right.

Q. Was Southland Tractors among those?

A. Yes, sir.

Q. And what were you to call on them and do?

A. Try to work out an amiable, friendly cross-franchise situation with the dealers for the mutual benefit of both.

Q. Now, was that a suggestion that you could have ignored?

A. Possibly not.

Q. Aren't you sure you couldn't; all right, let us go on from there. Following that suggestion coming from the *Chairman of the Board and President of the Massey-Harris-Ferguson, Ltd.*, did you get together with Mr. Boardman and call on Southland Tractors, Inc.?

A. Yes, sir.

Q. And discuss with them cross-franchising?

A. Yes, sir.

Q. Did you follow out that suggestion and send your men out and cross-franchise dealers?

C. R. Haggard

A. Well, our men went with the distributors' men and called on the dealers.

Q. Following this suggestion from Mr. Duncan?

A. That's right.

Q. And they did cross-franchise dealers?

A. That's right." (Tr. pps. 15-18).

"Q. Well, he came down here as the Chairman of the Board and President of Massey-Harris-Ferguson, Ltd., and looked the place over, didn't he?

A. I would say yes." (Tr. p. 15).

With respect to having been summoned to Atlanta for a conference with the Limited Company's President, the Memphis Branch Manager testified:

"Q. Before we get away from Mr. Duncan's visit in Atlanta with you, what other suggestions did Mr. Duncan make over there that day?

A. Well, to my knowledge it was just a general discussion of the business.

Q. The business being conducted by the Memphis Branch, is that right?

A. Yes, sir.

Q. Future plans for the Memphis Branch?

C. R. Haggard

A. I wouldn't say that; they were just asking how we were getting along, how we were doing, how sales were coming and cash, *et cetera*, the routine things he would be interested in.

Q. He did explain to you this amalgamation and discuss the effect that it was having in Memphis with the distributor, didn't he?

A. Not in detail, no.

Q. I didn't say in detail, but he did, didn't he?

A. Well, there was some discussion on it, yes, sir.

Q. On how the relationship in Memphis would be affected between the branch and the distributor, Southland Tractors, Inc., didn't he?

A. Yes, sir." (Tr. pps. 19-20).

* * *

"Q. Now, how many times has Mr. H. H. Bloom been at this Memphis branch of Massey-Harris since August, 1953?

A. I can't tell you exactly how many; he has been here several, however.

Q. Approximately how many?

A. Three or four or five.

Q. He was here in the fall of 1953 after the amalgamation in August, wasn't he?

A. I can't answer that at the moment; I don't know the exact dates he was here.

C. R. Haggard

Q. You do recall generally, though, that he came here within a few months after the amalgamation?

A. Mr. Taylor, I don't know the exact dates he has been here.

Q. Well, on his first trip following the amalgamation in August, 1953, to this branch, he did discuss with you the question of cross-franchising, didn't he?

A. I have had some discussion with him on various occasions since that date, yes, sir.

Q. With respect to cross-franchising?

A. Right." (Tr. pps. 21-22).

* * *

"Q. Let's follow that up just a little bit; in September, 1953, what American Company was Mr. Bloom president of?

MR. TURNER: If he knows.

A. I will have to answer, I don't know, then.

Q. You do know that he was a vice president of Massey-Harris-Ferguson, Ltd., from August, 1953 until he retired recently, don't you?

A. Yes, sir.

Q. Now, you say he did come to Memphis and discuss cross-franchising dealers with you; during those discussions, did he discuss with you the relationship between this branch and the Memphis distributor of the Ferguson line?

C. R. Haggard

A. Well, any question of cross-franchise naturally would cover that.

Q. And such discussion took place with you in Memphis, between you and Mr. Bloom, since August, 1953; that's right, isn't it?

A. Yes." (Tr. pps. 23-24).

* * *

"Q. How many business meetings for the company have you attended since August, 1953 that were attended by Mr. J. S. Duncan?

A. Well, to my knowledge it would just be the Fall Conference at Lake Long, Wisconsin; each Fall, each year in November, I believe he was there; he wasn't at this year's conference, but the two previous ones, I am sure he was there.

Q. At Lake Long, Wisconsin?

A. Yes, sir." (Tr. p. 5).

* * *

"Q. And Mr. Duncan attended all of those that you have mentioned, in 1953, 1954 and 1955?

A. To the best of my knowledge, he did, yes, sir." (Tr. p. 6).

* * *

"Q. What other officials of Massey-Harris-Ferguson, Ltd., attended the three meetings that we have discussed up to now?

A. Well, I couldn't name them offhand. There was assorted—, several men there, but to call them off by name I couldn't do that because I don't know." (Tr. p. 7).

* * *

C. R. Haggard

"Q. Can you name any others except Duncan and Bloom?

A. Well, I believe Mr. Burgess attended either one or two of the meetings; to name them right off, I can't.

Q. Do you recall a Mr. Metcalfe being at any of those meetings?

A. Yes, I believe he was at a couple of them, probably all three." (Tr. pps. 7-8).

• • •

"Q. Mr. Haggard, these meetings to which you have referred as being held in the fall of each year, tell us just what kind of meetings they were and the purpose of the meetings:

A. Well, it was a general sales meeting.

Q. Did all branch managers attend that meeting?

A. Yes, sir.

Q. And what other personnel from the branches would attend it?

A. Well, ordinarily it is the branch manager, the assistant, and sales supervisors and I believe the credit men attended; I don't think they attended every year, but on two occasions I believe they did." (Tr. p. 8).

• • •

"Q. And the object and purpose of that meeting was to discuss conditions as they existed, what you had done in the past and what you expected to do in the future, wasn't it?

C. R. Haggard

A. That is basically correct, yes, sir.

Q. And those who talked, talked about those three things, didn't they?

A. Not necessarily.

Q. Whether necessarily or unnecessarily, didn't they talk about those three things?

A. Well, various speakers talked on various subjects; the sales manager would talk on sales, the credit manager would talk in regard to credit; the engineer would talk about engineering.

Q. Engineers from Toronto would talk about engineering, wouldn't they?

A. The ones that were present, yes, sir; the American engineers would talk about the American products.

Q. When Mr. Bloom would talk, and he did talk on those three occasions, didn't he?"

A. Yes, sir." (Tr. pps. 10-11).

• • •

"Q. We would find enough of those orders and ladings to indicate a sufficient flow of shipments from Canada to this Branch to supply the needs of the Branch for the items manufactured in Canada, wouldn't we?

A. That's right.

Q. And that would apply to the last four and one-half months of 1953, wouldn't it?

C. R. Haggard

A. Yes, sir.

MR. TURNER: Just say it would apply for the whole period from August, 1953 to August, 1956.

Q. Each year, wouldn't it?

A. Yes, sir." (Tr. pps. 108-109).

* * *

"Q. Now, in the normal and ordinary course of the business conducted by this Massey-Harris Branch at Memphis, throughout the year, and to meet dealer requirements, shipments are made to dealers in West Tennessee and to other points in the territory served by this Branch continuously throughout each year with the qualification you made that they may be seasonal?

A. That's right." (Tr. p. 109).

* * *

"Q. Now, Mr. Haggard, with respect to this flow of shipments of machinery and tools and equipment from Massey-Harris-Ferguson, Ltd., to the Massey-Harris Memphis Branch and to dealers in West Tennessee and the other territories served by this Memphis Branch, that flow of shipments continued right on up to and through the date this suit was filed, didn't it?

A. Yes, sir.

Q. In Exhibit No. 43 you list as machines customarily made and shipped to this branch from Canadian factory, combines. Does this branch receive substantially all of the combines it handles from Canada?

A. Yes, sir.

C. R. Haggard

Q. And when I say from Canada, I mean from Massey-Harris-Ferguson, Ltd.

A. Right.

Q. You list on that same Exhibit No. 43, two models of tractors; which two tractors are they?

A. One is now a discontinued model, the pony, and the other is a pacer tractor.

Q. Are those the only two models of tractors that Massey-Harris, either Massey-Harris-Ferguson, Ltd., or Massey-Harris-Ferguson, Inc., have made since the amalgamation, in the small tractor field?

A. To my knowledge, yes.

Q. You also list in Exhibit No. 43, side delivery rakes; does this branch receive from the Canadian Company substantially all of the side delivery rakes it handles?

A. Yes, sir.

Q. Would the same be true with respect to mowers listed in the exhibit?

A. Yes.

Q. And would the same be true with respect to disc plows listed in that same exhibit?

A. To my knowledge, yes.

Q. And would the same be true with respect to grain drills?

A. Yes, sir.

C. R. Haggard

Q. And mold board plows?

A. Yes, sir.

Q. And one-way disc plows?

A. Yes, sir.

Q. And disc harrows?

A. Yes, sir.

Q. And hay balers?

A. Yes, sir.

Q. Excluding tractors from the farm machinery implement field, insofar as this Branch is concerned, just disregarding tractors for the minute, the farm machines listed in your Exhibit No. 43 would comprise by far the greater volume of business handled by this Branch, would it not?

A. Yes, sir." (Tr. pps. 111-113).

* * *

"Q. Mr. Haggard, without excluding tractors, would you say that 75 *percent of the volume* of farm implements, tractors, equipment and so forth consist of machinery and implements shipped to this Branch *and to dealers in the territories served by this Branch*, is made up of implements, machinery and *so forth shipped to this Branch by Massey-Harris-Ferguson, Ltd., to this Branch or dealers served by this Branch?*

MR. TURNER: Do you mean the dollar volume or units?

C. R. Haggard

MR. TAYLOR: Well, either way.

MR. TURNER: All right, let him answer it either way, if he can."

A. I can't answer that to an exact percentage; it would be somewhere between 60 to 75 percent, roughtly.

Q. All right, sir; would you say that in dollar volume the tractors, farm machinery and equipment shipped to this Branch and to dealers served by this Branch in line with shipments such as these reflected by your Exhibits 58, 59, 60 and 61 would exceed $3,000,000 a year?

MR. TURNER: Those exhibits are the ones showing shipments from Canada?

MR. TAYLOR: From Canada to the Branch.

MR. TURNER: In the different forms?

MR. TAYLOR: Yes.

MR. TURNER: I understand in other words your question goes to all of the stuff from Canada, would it exceed $3,000,000 a year?

MR. TAYLOR: Yes.

A. That would depend on the business for the year, whether it would be a drought year or a good year.

Q. Well, would you say you expected it to exceed $3,000,000 a year for the fiscal year ending October 31, 1956?

C. R. Haggard

A. We hope it will.

Q. And if it keeps on at the current rate, it will, do you think?

A. It is quite possible.

Q. Didn't that volume, without going back and spelling it all out again, exceed $3,000,000 a year in 1955?

A. The aggregate of our volume for 1955 would exceed $3,000,000, yes, sir." (Tr. pps. 115-117).

* * *

"Q. Is Exhibit No. 64 to your testimony typical of return shipments that this Branch makes to Massey-Harris-Ferguson, Ltd., in the ordinary course of business?

A. It would be the very rare occasion; it undoubtedly covers a box of surplus parts.

Q. But from time to time, but not at too frequent intervals, and certainly sometimes during each year such shipments as that reflected by Exhibit No. 64 are made; is that right?

A. That's right." (Tr. p. 127).

* * *

Limited Company's Use Of Memphis Branch For Its Field Testing Engineers.

C. R. Haggard

Q. You have exhibited what appears to be this Branch's shipping order, is that right?

A. Yes, sir.

Q. Number 1179 dated 5/19/54; please tell us what that is.

A. That covers the 33 tas model tractor that was delivered to the field test engineers from Toronto, Canada to be used in field test work in the United States.

Q. Did you say engineers employed by Massey-Harris-Ferguson, Ltd.?

A. I didn't say it, but that's right.

Q. That would be right?

A. Yes." (Tr. pps. 118-119).

* * *

"Q. Was that Exhibit No. 52 just sent to you in ordinary course of business?

A. I would say yes." (Tr. p. 68—Haggard).

Exhibit No. 52 was a letter from Toronto to the Memphis Branch Manager with respect to field testing by Canadian engineers. Note: All of the following "Haggard" exhibits were produced from the Memphis Branch Manager's file.

* * *

Exhibit 28C-D to Haggard's testimony was written by Bloom, first vice president of the Limited Company, addressed to the manager of the Memphis Branch, and shows how completely the Limited Company transacted its business through the Memphis Branch.

C. R. Haggard

Exhibit 28C-D—Haggard:

MASSEY-HARRIS-FERGUSON
Limited

Manufacturers of Farm Implements for Over 100 Years
Head Office, Toronto 3, Canada

Office of the First Vice-President

October 27, 1955.

Mr. C. R. Haggard,
Branch Manager, Memphis Branch,
Box 3594 McKellar Station,
Memphis, Tennessee
U. S. A.

Dear Mr. Haggard:

I have just been having a chat with Bob Ashton who has returned this morning from Stuttgart, Arkansas, where we were operating a number of experimental machines. I was asking Bob how things were going, etc., etc., and he mentioned that there are still complaints of a shortage of certain parts down there, which both 61 Implement Company at Blytheville and Layne Arkansas Company at Stuttgart said they were unable to get. There is one item in particular that Layne Arkansas Company said they could not procure, and that is the spike cylinder teeth for the rice combines, and I want to check with you as to the availability of these teeth.

Bob said that he had endeavoured to get some of these teeth at Layne Arkansas Company in Stuttgart, and they told him that they did not have this tooth in stock—had had them on order since last March, but had not been able to get them up to now, and they had been back-ordered.

When Bob told me this, I telephoned *our Parts De-*

partment here and had the matter checked, and was informed that—

(a) *all orders for U. S. branches on the home office here for spike teeth had been cleaned up.*

(b) that a substantial quantity had been shipped to Memphis Branch and there were no back-orders from the Memphis Branch.

What is the situation at your branch—have you received your full order of cylinder teeth? have you been able to fill Layne Arkansas Company's orders for these teeth? have you still stocks of unshipped teeth in your parts stocks? If you are sold out, have you ordered forward from the Parts Department and, if so, what advice have you received regarding your request for additional quantities?

An early reply in this connection will be appreciated.

Yours sincerely,

/ss/ H. H. Bloom
First Vice-President

HHB;am.
cc Mr. J. E. Bowden, Racine.

Note: Exhibit 28 A & B to Haggard is a long reply by the Memphis Branch Manager to Exhibit 28 C & D, addressed to: "Mr. H. H. Bloom, First Vice President, Massey-Harris-Ferguson, Ltd., Toronto, Ontario, Canada."

* * *

Exhibit 36—Haggard.

The following exhibit to Haggard was written from Toronto by Dillon, a Toronto engineer.

C. R. Haggard

MASSEY-HARRIS-FERGUSON LIMITED

June 21st, 1955.

MEMORANDUM

To: Messrs. *C. R. Haggard, Memphis*—E. W. Hostetter, Baltimore—D. L. Jordan, Atlanta—L. G. Lindsay, Columbus—H. C. Steffen, Indianapolis.

From: Mr. R. M. Dillon—

Subject: *No. 16 Pacer Tractor.*

The No. 16 Pacer Tractor for 1957 sales is to be equipped with a three point hitch.

At the time the tractor is introduced, a complete line of implements will be required for the new hitch.

Plans are presently being made for this list of implements approved by management for development.

Before this programme is finalized, I should like to have a talk with each of you about your implement requirements.

With this idea in mind, I am planning to visit each of you. Below is the schedule I am planning. If this interferes with your plans, please let me know and I shall endeavour to arrange the schedule differently.

Wednesday—July 6th—Columbus
Friday—July 8th—Indianapolis
Monday—July 11th—Memphis

C. R. Haggard

Monday—July 18th—Atlanta
Friday—July 22nd—Baltimore

/ss/ R. M. Dillon,
Chief Development Engineer,
Tractor Section.

RMD/am
c.c. Mr. W. A. Watts—

* * *

Exhibit 31 A thru D to Haggard

This is a letter from Bloom written from Toronto on Limited Company stationery, September 10, 1955, to the Memphis Branch Manager, requiring him to furnish material for a magazine article to be written by Bloom; also, the Branch Manager's reply furnishing the material, addressed to "Massey-Harris-Ferguson, Ltd., Toronto 3, Canada."

* * *

Exhibit 43—Haggard.

The following statement was prepared and made an exhibit by Memphis Branch Manager.

The following machines are customarily made and shipped to us from the Canadian factories:

Combines
Two Models of Tractors
Side Delivery Rakes
Mowers
Disc Plows
Grain Drills
Moldboard Plows
One-Way Disc Plows
Disc Harrows
Hay Balers

* * *

C. R. Haggard

Exhibit 20 C & D—Haggard.

This is a bulletin from Bloom "TO: ALL VICE PRESIDENTS AND DEPARTMENT HEADS," dated August 5, 1954. This exhibit, produced from the files of the Memphis Branch Manager, contains the following:

> "A number of our departments are still spending too much money on telephone calls. When we consider the fact that we have teletype connections to every one of our branches, to our associates in Canada and Batavia, and a new installation at Detroit, our policy with respect to telephone calls must simply become one of exception and emergency rather than the general rule."

* * *

The following exhibit is a letter from Duncan, writing as President of the Limited Company, and deals directly with the Manager of the Memphis Branch. Duncan refers to the Subsidiary as the United States Division, and tells what he expects of that Division and the Memphis Branch.

Exhibit 1 A & B—Haggard.

MASSEY-HARRIS
Limited

Manufacturers of Farm Implements for Over 100 Years
Head Office, Toronto 3, Canada

James S. Duncan, Chairman and President

C. R. Haggard

December 9th, 1955.

Dear Mr. Haggard:

I want to tell you how pleased I was to receive the telegram sent by all *District Managers of the United States* Division during their *Toronto visit*. Your good wishes and kind remarks were very much appreciated.

I would like to assure you that I felt very badly over my inability to welcome you all to Toronto, to congratulate you on past endeavours and to wish you success throughout the coming year; in fact, I curtailed my European trip by one week, as I was looking forward especially to the opportunity of meeting and talking with all the U. S. sales personnel.

In my overseas trip, I saw something of the excellent progress being made in France, in the United Kingdom, and in the Eastern Hemisphere generally, but ever since I took over the leadership of the Company almost twenty years ago, I have remained convinced that the backbone of the Company's strength and by far the biggest growth possibilities could be found in the great United States farm implement market.

The U. S. Company, which had done well in the post-war years, has been giving me great concern during the past two years, but with your co-operation and assistance, I feel sure that we are going to reverse the trend, and that great achievements lie ahead. I am confident that, by the turn of the year, I will be back in my usual fighting trim, and I know you will agree that, with the new and outstanding equipment you have been given, the

high objectives set for 1956 can be tackled with every confidence.

May I take this opportunity of wishing for you and your family a most Happy Christmas and all success in the New Year.

Yours very sincerely,

/ss/ Jas. S. Duncan
Chairman and President.

Mr. C. R. Haggard,
McKellar Station, Bob 3594,
Memphis, Tennessee

* * *

Toronto Engineers Use Memphis Branch.

Exhibit 42—Haggard.

The following exhibit is an expense memorandum of the Memphis Branch prepared by Haggard of various members of the Toronto Engineering Department.

Memorandum of Advance to Members of Field Test Section of Toronto Engineering Department
11-15-55

H. P. Harrison		George Salvian		J. MacDonald.	
10-10	$200.00	11- 9	$300.00	10-10	$200.00
10-31	$200.00	10-10	$200.00	10-24	$200.00
		10-24	$300.00	11-15	$100.00
R. Kulvietis		11-15	$700.00	11- 7	$200.00
		11- 1	$200.00		
10-10	$200.00	11- 1	$100.00	J. H. Gould	
10-21	$200.00				
10-31	$200.00	F. S. Van Bason		10-10	$200.00
11-15	$200.00			10-21	$200.00

C. R. Haggard

G. H. Anderson

10-10 $200.00
10-24 $200.00

C. Haining

10-12 $300.00
10-21 $200.00
10-31 $200.00

J. McDonald

10-25 $300.00
10-31 $300.00

10-10 $200.00
10-14 $300.00
10-24 $200.00
11-15 $300.00
11- 7 $200.00

D. H. Shippion

10-10 $200.00
10-21 $200.00
10-31 $300.00

H. P. Harrison

10-14 $200.00
10-21 $200.00

11- 1 $200.00

Don McNeil

10-10 $300.00
11- 1 $200.00

W. Prezesiecki

10-25 $200.00

* * *

Exhibit 50-A—Haggard

MASSEY-HARRIS-FERGUSON LIMITED

April 6th, 1954.

MEMORANDUM

To: Mr. C. R. Haggard—Manager, Memphis Branch, Tennessee.

From: Mr. H. C. Smith—Engineering Department, Toronto, Ontario.

Subject: *No. 1 Balers.*

In reply to your memo to Mr. Watts of March 30th, 1954, re the baling of green oats with the experimental machines, we will be shipping three machines on or about April 29th, 1954. As soon as a definite date is set, we will drop you a line.

C. R. Haggard

If the Balers arrive before we do, would you make arrangements to unload same. We will be keeping in close contact with you and will let you know what our tractor requirements are going to be.

/ss/ H. C. Smith,
Haying Machinery Section.

HCS:M.
cc: Mr. W. A. Watts
Mr. E. A. Adams

* * *

Exhibit 50-B—Haggard
March 30, 1954

Mr. W. A. Watts—TORONTO cc: Mr. E. A. Adams
Mr. C. R. Haggard—MEMPHIS

We have a memorandum from Mr. E. A. Adams regarding correspondence of December 11th and the writer's reply to Mr. Adams on December 15th. Copy of this December 15th memorandum is attached.

The memorandum is self-explanatory and our thinking in regards the baling of the green oats and the location for the baler in the Mississippi territory would still be the same as in our earlier correspondence.

It may be that we would not send the baler to the dealer at Vardaman, Mississippi, but we do have a new dealer at Houston, Mississippi, which is only fifteen or sixteen miles away and we could still work the baler in this immediate territory. We trust this is satisfactory with you and we are looking forward to having the baler with the improved pickup attachment on same to work in this particularly rough crop.

Very truly yours,

C. R. Haggard

CRH:rg

C. R. Haggard

Exhibit 50-C—Haggard

THE MASSEY-HARRIS COMPANY

March 23, 1954

MEMORANDUM

To: MEMPHIS—Mr. C. R. Haggard

FROM: RACINE—Mr. E. A. Adams

Subject: *Pick-up Baler Work—Memphis Branch, Territory.*

Herewith attached is copy of memo dated March 18 from Mr. Watts on this subject.

I seem to have mislaid your last memo to me. Would you please write to Mr. Watts direct with a copy to the writer, advising the situation as you see it now—particularly giving dates and the type of crop likely to be encountered.

/ss/ E. A. Adams
Vice-Pres., Eng.

EAA:ma
cc: W. A. Watts—Toronto
W. G. Miller—Toronto

* * *

Exhibit 50-D—Haggard

March 18, 1954

Mr. E. A. Adams—Racine
Mr. W. A. Watts—Toronto

Pick-up Baler Work—Mississippi

I received a copy of your memo of December 11 to Mr. Haggard of Memphis, in which you asked him if there

would be some work available in baling green oats around May 1st in the neighborhood of Vardaman, Miss.

You referred specifically to a Mr. Watkins at Vardaman, who apparently had one of our Balers last year and had considerable difficulty with it, in baling this crop.

We believe our field test Balers will be available for shipment about May 1st and are planning to send them to Mississippi for their first trial.

However, I am wondering if you have ever had a reply to your memo of December 11th to Mr. Haggard and if there will be any baling of green oats in the Vardaman area this May.

Would you kindly let me know regarding this matter and if you have not had a reply from Haggard, possibly we should contact him direct in regard to these early trials.

W. A. Watts,
Chief Engineer
Canadian Division

cc:-W. G. Miller

* * *

Exhibit 50-E—Haggard

December 15, 1953

Mr. E. A. Adams—RACINE
Mr. C. R. Haggard—MEMPHIS.

PICK-UP BALER WORK IN MISSISSIPPI.

We have your memorandum of December 11, 1953, regarding the above. It is the consensus of opinion here that baling green oats will again be a big item in 1954. You raise the question that possibly this oats baling can't

C. R. Haggard

be depended on too seriously because they may let the oats stand for combining. Due to the cotton acreage allotment and also the allotment on small grains, it is the opinion of some of the farmers that more of the oats will be baled and not be combined because if they are baled, they are not counted against their acreage allotment.

You requested some information in regards the baler owned by Mr. Watkins. This man does not have the baler. He encountered some more baling trouble and the dealer was forced to take the baler back. It was necessary to take the baler back to avoid completely jeopardizing the position of Massey-Harris in the Vardaman, Mississippi territory.

We will have the same baler or another baler working in this particular area, however, and we are very much interested in having some help from the Engineering Department in the baling of these exceptionally heavy oats.

We appreciate very much your interest in this, Mr. Adams; and if we have a normal season in 1954, we should have the experimental baler in the Mississippi territory and ready to go by May 1.

Very truly yours,

C. R. Haggard

CRH:rg

* * *

Exhibit 51 A thru C—Haggard.

Exhibit 51-A—Haggard

April 6, 1954

Mr. F. J. Newhouse, Chief Development Engineer, Plows—TORONTO

C. R. Haggard

Mr. C. R. Haggard—MEMPHIS.

We have a copy of your memorandum dated April 1st to our dealer, the England Equipment Company of Sparta, Tennessee, in regards to the new 3-4 furrow Mounted Disc Plow for the 44 Tractor.

As a point of information, we have checked with the Hoover Trucking Company here in Memphis and they inform us that the plow left Memphis on March 29, 1954, for Nashville and was delivered to the Potter Freight Lines at Nashville on March 30th or 31st. The Potter Freight Lines were to deliver the plow from Nashville on in to Sparta.

The Hoover Freight Lines are checking in a letter with the Potter Freight Lines asking for confirmation of delivery. It is our opinion, Frank, that the plow has been delivered and we are quite sure that when Mr. Gray calls at Sparta, Tennessee, that the plow will be on hand and ready to go.

Very truly yours,

C. R. Haggard

CRH:rg
cc: England Equipment Company
Sparta, Tennessee

* * *

Exhibit 51-B—Haggard

April 1st, 1954.

England Equipment Company,
Sparta, Tennessee.

Gentlemen:

On or about March 19th, we shipped to your attention one 3-4 furrow mounted Disc Plow for use on the No. 44 Tractor. Mr. Ed Gray has, I believe, written to you re

C. R. Haggard

this machine, and Mr. Gray, who is presently in North Carolina, will be calling on you within a few days.

We have not heard from you as to whether the machine has arrived and have, therefore, instigated an investigation on the shipping of the plow from this end. I would greatly appreciate it if you would contact the trucking line from your end to help expedite the arrival of the plow to your place.

The plow was shipped from Toronto by Consolidated Trucking Co. to Detroit, Ellis Trucking Co. *from Detroit to Memphis*, and by Hoover Trucking Co. from Memphis to Sparta.

If the plow has not already arrived, you could contact the last named trucking firm.

Yours very ~~truly,~~

MASSEY-HARRIS-FERGUSON, LIMITED.

/ss/ F. J. Newhouse
Chief Development Engineer,
Plows.

FJN:M
cc: Mr. C. R. Haggard

* * *

Exhibit 51-C—Haggard
Plow left Memphis
3/29/54 for Nashville
Delv'd to Potter
Frt Lines at Nashville
March 30th or 31st
Plow should be
delivered by this time.
Have written

C. R. Haggard

letter to Potter
asking for
confirmation
DJH

* * *

Exhibit 54—Haggard.

MASSEY-HARRIS-FERGUSON LIMITED

August 27th, 1954.

MEMORANDUM

To: Mr. C. R. Haggard—Branch Manager, Memphis, Tennessee.

From: Mr. F. J. Newhouse—Engineering Department, Toronto.

Subject: *Mounted Disc Plow tests at Sparta, Tenn.*

During the course of our plow tests at Sparta, Tenn., with the mounted disc plow, we noted that Mr. England of the England Equipment Co. has had to replace 4 low lift shafts on the No. 44 Special tractor which has been used on the tests.

Since these shafts have failed during the tests, we believe that we should be responsible for the cost of these shafts. Will you, therefore credit Mr. England with the cost of the four low lift shafts and charge Toronto Engineering Dept. ER 31801 with this amount.

/ss/ F. J. Newhouse,

Chief Development Engineer,
Plows.

FJN:M.
cc: Mr. John England

* * *

C. R. Haggard

Exhibit 44—Haggard.

The Limited Company continues to use the Memphis Branch.

MASSEY-HARRIS-FERGUSON
Limited

Manufacturers of Farm Implements for Over 100 Years
Head Office Toronto 3, Canada

Engineering Department August 28, 1956.

Mr. C. R. Haggard,
Branch Manager,

Massey-Harris-Ferguson, Inc.,
McKellar Station, Box 3594,
Memphis, Tennessee.

Dear Mr. Haggard:

I would like to advise you that one of our experimental combines, a rice model, will be shipped tomorrow by rail to Stuttgart area care of Layne-Arkansas Company. Our personnel will be in Stuttgart to unload and operate the machine in the field.

Yours truly,

/ss/ K. J. M. Godlewski
Chief Field Test Engineer

KJMG-km

* * *

Exhibits 49 B, C & A—Haggard.

Exhibit 49-B—Haggard

C. R. Haggard

MASSEY-HARRIS-FERGUSON
Limited

Manufacturers of Farm Implements for Over 100 Years
Head Office Toronto 3, Canada

January 18th, 1954.

Massey-Harris Co., Inc.
McKellar Station,
Box 3594,
Memphis, Tenn.

Attention: Mr. C. R. Haggard, Manager.

Dear Ray:

Since my trip through the south last April, we have developed a number of changes on the Planting and Fertilizing Attachment for No. 44 Row Crop Cultivator. These changes may be summed up as larger diameter seed and fertilizer conductors with straightened contours to eliminate plugging, and a fast clutch release to at least minimize the trouble with stripping the teeth off the clutch sprocket.

We propose placing on Pony or Pacer in your territory, two complete sets of conversion parts for the planter, preferably in the Alabama area where serious trouble was encountered in side-hill planting last season (ref. Mr. Turner's report to you last Spring). In view of this, would you please arrange with Mr. Turner to establish two locations where we may install the conversion kits on customers' equipment; these locations should give us the worst side-hill conditions possible for planting, and if possible locations where that wet sticky fertilizer is used. We also propose placing six extra sets of the clutch

linkage on test, possibly two sets in Alabama and four sets in Mr. Rutledge's territory.

In connection with the planter equipment testing, could you please give us an approximate date for the start of planting in the area of Mr. Turner's choice. We realize this is very early to ask such information, but we need only an approximation so that we can draw up tentative plans for delivery and installation.

Also in your territory, preferably with Jack Fondron of Itabena, Miss., we propose to place an experimental tool bar with cotton cross chopping units.

Hoping these plans meet with your approval, and with best personal regards, we remain,

Yours very truly,

MASSEY-HARRIS-FERGUSON, LIMITED.

/ss/ J. L. Coleman,
Tractor Section.

JLC:M.
cc: Mr. L. A. Webster—Ferguson Inc.
Mr. Turner—Memphis
Mr. G. A. Rutledge—Memphis

* * *

Exhibit 49-A—Haggard

January 27, 1954

Mr. J. L. Coleman, Tractor Section, Massey-Harris—Ferguson, Ltd.—TORONTO

Mr. C. R. Haggard—MEMPHIS

We have your memorandum of January 18, 1954, relative to some developments and changes on the planting

and fertilizing attachment for No. 44 Row Crop Cultivator. We are happy to hear of these developments.

Mr. Turner has already submitted a letter to us giving us the information you requested. We of course would like the two complete sets of conversion parts for the Planter shipped to our transfer point at Cullman, Alabama, the North Alabama Equipment Company.

Mr. Turner informs us that they begin planting cotton in the valley sections from April 10 to April 20 and by May 1 they are planting in the hill sections. He states that possibly the planting season may start earlier this year, governed of course by the weather and moisture but there is some talk of early planting to get ahead of the pink boll weevil.

We will be happy to assist you in any way possible with these new developments and you can be assured of 100% cooperation both by our Mr. Rutledge and Mr. Turner as well as any personnel here at the Branch. It was a pleasure to hear from you.

Very truly yours,

C. R. Haggard

CRH:rg
cc: T. S. Turner

* * *

C. R. Haggard

Exhibit 48—Haggard.

MASSEY-HARRIS-FERGUSON
Limited

Manufacturers of Farm Implements for Over 100 Years

Head Office Toronto 3, Canada

February 18th, 1954.

Mr. Jack Fondron,
Itabena, Mississippi,

Dear Jack:

We are proposing to put in your hands for the coming season, an experimental No. 40 Tool Bar with cotton cross chopping units. This bar is very similar to the No. 47 bar which you have, but it uses a plain 1-3/4 inch square bar which may be ordered in 5 ft., 6 ft., 7 ft., and 8 ft. lengths.

When I was with you last Spring you were planning to extend your 47 bar to install more chopping units. Now with the No. 40 bar I propose to equip you with the bar length you want and we may find your proposal warrants considering, i.e. that we call up a bar longer than 8 ft.

May we convert your No. 47 bar into a No. 40, or have you two Pony Tractors so that you would like a No. 40 in addition to the No. 47?

If you want a No. 40 bar complete, would you please tell us the length you want and the number of chopping units you will require—we will have to order the chopping units and have them shipped to you. The shipping details on the tool bar itself will depend on whether we

can convert the No. 47 bar you have, or make a complete No. 40 bar available.

I shall anticipate an early reply, so that all the shipping details may be ironed out. If, as you suggested last Spring you prefer to 'phone, I will be out of the office February 22nd and 23rd. The 'phone number is Toronto —Empire 6-6911, local 613.

Best regards to you and Mrs. Fondrom. I expect to see you about the time the catfish are running—mid April.

Sincerely yours,

MASSEY-HARRIS-FERGUSON, LIMITED.

/ss/ J. L. Coleman,
Tractor Section.

JLC:M.
cc: Mr. P. E. Holmes
Mr. C. R. Haggard
U.S.A.

(End of Haggard Exhibits)

H. H. Bloom

UNITED STATES SUBSIDIARY TREATED ONLY AS A MARKETING OUTLET AND COMPLETELY CONTROLLED INSTRUMENTALITY.

H. H. Bloom

Directors and Officers of the Parent Company and the Officers of the subsidiary, Massey-Harris-Ferguson, Inc., are shown in the Limited Company's 1954 Annual Report. (App. p. 107b).

The individuals who were Directors on both Boards, or a Director on one Board and an Officer of the other were:

James S. Duncan, Chairman of the Board and President of the Limited Company; Chairman of the Board of the subsidiary (Tr. p. 88);

H. H. Bloom, First Vice President of the Limited Company and President of the subsidiary and Director (Tr. p. 89);

C. N. Appleton, on both Boards (Tr. p. 90);

E. G. Burgess, Director of subsidiary and Vice President of Limited (Tr. pps. 90-91);

R. H. Metcalfe, Director of subsidiary and Vice President of the Parent (Tr. p. 91);

W. W. Mawhinney, Director of subsidiary and Vice President of Parent (Tr. p. 91);

W. E. Phillips, Director of both companies (Tr. pps. 91-92);

H. H. Bloom

E. P. Taylor, Director of both companies (Tr. p. 92);

M. W. McCutcheon, Director of both companies (Tr. p. 93);

J. A. McDougald, Director of both companies (Tr. p. 93);

C. W. Webster, Director of both companies (Tr. pps. 93-94). (Exh. 10 to Bloom).

Proxy for voting all stock ran from the Limited Company to Duncan or Bloom or Garrick or Milne. (Tr. p. 93). It is typical of all proxies used by the Limited Company. (Tr. p. 96).

* * *

H. H. Bloom

"Q. Mr. Bloom, I direct your attention to Exhibit No. 11 for identification to your testimony, or your deposition, and especially to the item and the balance sheet, 'Lands, Building and Equipment at Cost,' under the line headed October 31, 1954, $61,523,335, less depreciation, $30,897,707, and the subtracted result of $30,713,628, and ask you if the real properties occupied by the Massey-Harris branches in the United States are not included in that item?

A. Well, they are included because this is a consolidated balance sheet.

Q. And the real property occupied by the Massey-Harris branch in Memphis, Tennessee is included in that item?

A. That's right." (Tr. p. 268).

* * *

H. H. Bloom

"Q. I direct your attention to the item in that balance sheet, inventories the column headed October 31, 1954, $87,133,696; the inventory in the Massey-Harris branch at Memphis is included in that item?

A. That's right." (Tr. pps. 268-269).

* * *

Cecil P. Milne

Testimony of Cecil P. Milne:

On the same day that the subsidiaries were merged the minutes reflect the following:

"Q. I direct your attention to the minutes of a special meeting of the Board of Directors of Massey-Harris-Ferguson, Inc., dated September 1, 1954 and ask you if those minutes contain the following paragraph:

'172. CAPITAL EXPENDITURES: Mr. C. P. Milne, Executive Vice President, reported that approval of Capital Expenditures had been received *from the Parent Company* as follows:

(a) Metal Clad Building for Amarillo—$5,250.00.

(b) Belle City Building Modifications—$63,-111.00.'

A. That is what it says, yes, sir.

Q. You signed those minutes?

A. Yes, sir.

Q. So you would say that you did report that to that Board of Directors' meeting?

A. Apparently, yes.

Q. And when you referred to the Parent Company in the minutes there, you were referring to Massey-Harris-Ferguson, Ltd.?

A. Yes." (Tr. pps. 110-111).

* * *

Cecil P. Milne

Other minutes reflect:

"Q. I direct your attention to minutes of a postponed quarterly meeting of the Board of Directors of Massey-Harris-Ferguson, Inc., May 6, 1955 and ask you if those minutes contain the following:

'208. CAPITAL EXPENDITURES: Mr. G. H. Thomas, Vice President, Administration, presented the following 1955 Capital Expenditures Budget in the total amount of $2,203,311 *as approved by the Parent Company*:

'$600,000—for new branch and distribution facilities of Portland, Spokane, Billings and Lansing; approved by the Board October 29, 1954.

'The balance submitted for approval by the Directors at this meeting is in the amount of $1,603,311; covering estimated expenditures as follows:

'$307,679—for new engineering laboratory at Detroit.

'$525,000—TO-35 and MH-50 tractors.

'$50,000—Ferguson Baler.

'$50,000—Modifications necessary to properly utilize the former malleable foundry at Batavia.

'$500,000—Replacement and improvement of equipment; also facilities at Racine, Batavia, Fowler and Detroit factories.

'$59,496—Engineering departments at Racine and Detroit.

Cecil P. Milne

'$86,136—Branch equipment, including automobiles and trucks.

'$25,000—Head office equipment.

'$1,603,311—Total.'

Is your answer yes?

A. Yes, sir.

Q. The Parent Company referred to in what I have just read you from the minutes is the Massey-Harris-Ferguson, Ltd.?

A. Yes." (Tr. pps. 111-112).

* * *

"Q. I direct your attention to minutes of a regular quarterly meeting of the Board of Directors of Massey-Harris-Ferguson, Inc., October 29, 1954 and ask you if those minutes contain the following:

'186. CAPITAL EXPENSE: Mr. C. P. Milne announced that *approval had been received from the Parent Company* for an expenditure of $600,000 for branch facilities at Portland, Oregon; Spokane, Washington; Billings, Montana; and Lansing, Michigan.'

A. Yes, Sir.

Q. And you signed those minutes?

A. Yes, sir.

Q. When in the minutes you refer to 'Parent Company' you were referring to Massey-Harris-Ferguson, Ltd.?

Cecil P. Milne

A. Yes, sir." (Tr. p. 111).

* * *

"Q. I direct your attention to minutes of a regular quarterly meeting of the Board of Directors of Massey-Harris-Ferguson, Inc., July 29, 1955 and I ask you if those minutes contain the following:

'222. CAPITAL EXPENDITURES: Mr. C. P. Milne announced that *approval had been received from the Parent Company* for an expenditure of $14,475 to cover purchases of machine tools and equipment.' Those minutes of that meeting recite that, do they not?

A. That is correct.

Q. And you signed those minutes?

A. Yes, sir.

Q. And by the 'Parent Company' you meant Massey-Harris-Ferguson, Ltd.?

A. Yes." (Tr. pps. 112-113).

* * *

"Q. I direct your attention to minutes of a regular quarterly meeting of the Board of Directors of Massey-Harris-Ferguson, Inc., October 28, 1955 and ask you if those minutes contain the following:

'239. CAPITAL EXPENDITURES: Mr. Lee J. Wolf, Vice President, Administration, presented the following 1956 Capital Expenditures Budget in the total amount of $1,182,261 *as approved by the Parent Company*:

Cecil P. Milne

'Factories—Normal replacement of machine tools and additional equipment:

CITY	AMOUNT
Racine	$ 565,135.00
Batavia	110,000.00
Detroit	87,700.00
Fowler	56,010.00
	$ 808,845.00
Sales Branches—Office Machines, equipment, Cars and Trucks	$ 215,170.00
Head Office	51,305.00
Engineering	75,416.00
Special Projects	31,525.00
	$1,182,261.00'

Do the Minutes contain what I have just read?

A. Yes.

Q. And you signed them?

A. Yes, sir.

Q. And the Parent Company is the Massey-Harris-Ferguson, Ltd.?

A. Yes." (Tr. pps. 113-114).

* * *

The same interlocking directors were elected to the Board of Massey-Harris-Ferguson, Inc., on 2/15/56 by the Limited Company voting all the outstanding stock for their election. (Tr. pps. 114-115).

On the same day the following dominating officers were elected: Duncan, Chairman of the Board; Bloom,

Cecil P. Milne

President; Wolf, Vice President and Treasurer; Adams, Vice President; Thornbrough, Vice President, and Klemm, Vice President. (Tr. p. 115).

* * *

The Limited Company advanced the subsidiary $5,000,000.00 during the year 1956. (Tr. p. 157). And:

"Q. Are there any minutes or correspondence or any inter-office or inter-company communications or written material of any kind with respect to the $5,000,000 which you say Massey-Harris-Ferguson, Ltd., loaned to Massey-Harris-Ferguson, Inc.?

A. I don't believe so; it would be arranged over the telephone, or there might have been a meeting here." (Tr. p. 166).

* * *

"Q. Did you negotiate with anyone in the Ltd. Company for borrowing the $5,000,000?

A. I didn't, no.

Q. Well, down where we live $5,000,000 is a whole lot of money. I don't believe one treasurer could call up another treasurer and say, 'Send me $5,000,000' and get it. Can you tell me more about how Massey-Harris Ferguson, Ltd., was persuaded to just send $5,000,000 down here as a result of a telephone call?

A. I don't think they needed persuasion particularly; it looked like a reasonable business arrangement; *it had been done in the past;* there have been times when we have advanced them money in past years, *there is nothing abnormal about it.*" (Tr. pps. 166-167).

* * *

Milne admits that Massey-Harris Company was

Cecil P. Milne

"United States Sales Division of the parent company." (Tr. p. 193).

"Q. Now, in that heading that I read you, the U. S. sales division is referred to; now, I am asking you what division is there meant?

A. The Massey-Harris Company." (Tr. p. 193—Milne).

* * *

"Q. And do you know of any Division that Massey-Harris-Ferguson, Ltd., had in the United States other than Massey-Harris-Ferguson, Inc.?

A. No.

Q. So you would say that the Division there referred to in the United States was Massey-Harris-Ferguson, Inc.?

A. Yes." (Tr. p. 139).

* * *

"Q. Do you know of any production engineering that the Massey-Harris-Ferguson, Ltd. had in the United States other than that of Massey-Harris-Ferguson, Inc.?

A. No." (Tr. p. 141).

* * *

"Q. We can just let the record show that you will not produce any correspondence or any other written material in connection with your action in securing the approval of Mr. Thornbrough as an official of Massey-Harris-Ferguson, Ltd., prior to the institution of this suit."

A. That is my position, yes, sir." (Tr. p. 173).

Herman G. Klemm

The following from the testimony of Herman G. Klemm:

Klemm's attention was directed to the following in Exhibit 2, page 5—

> "It is very necessary to coordinate all engineering activities between Toronto, Racine and Detroit." (Tr. p. 43).

Under pressure he admitted—

> "Q. Well, following that meeting, did you in cooperation with Toronto and Racine set about to put that paragraph in force and coordinate the three engineering departments?
>
> A. Yes, sir." (Tr. p. 43).

* * *

On January 25, 1954, E. A. Adams, Vice President of Massey-Harris Company, was writing to H. H. Bloom, with copies to Duncan, Chairman of the Board and President of the Limited Company, Burgess, Vice President of the Limited Company, and W. A. Watts, Chief Engineer of Toronto Engineering (Tr. p. 51), as follows:

> "*Complete Ferguson Machines with minor changes to be used by Massey-Harris.*
>
> *These machines retain the individuality associated with Ferguson machines* but are painted *red.* They are fully approved Ferguson tools." (From Exh. 2 to Klemm, headed ENGINEERING, p. 2 of E. A. Adams' memorandum dates January 25, 1954).

* * *

Herman G. Klemm

"Q. Now, Mr. Klemm, you took an active part in the designing and developing and furnishing the manufacturing department with the data and information required to manufacture the TO-35 tractor, didn't you?

A. Yes, sir." (Tr. p. 56).

* * *

"Q. And were your reports made to Mr. Ferguson?

A. What is that, sir?

Q. Were your reports made to Mr. Ferguson with respect to the designing and development of the TO-35 tractor?

A. Yes, sir.

Q. And at that time *he was Chairman of the Board of Massey-Harris-Ferguson, Ltd.*, wasn't he?

A. Yes, sir." (Tr. p. 57).

* * *

Exhibit 2B through 2J—Haggard, produced by the Memphis Branch Manager from his files:

MASSEY-HARRIS-FERGUSON, INC.
Racine, Wisconsin

Manufacturers of Farm Equipment for Over 100 Years

May 10, 1955

The following is a copy of a communication from *Mr. James S. Duncan, President and Chairman of Massey-*

(Exhibit 2B, J. Haggard, Cont'd)

Harris-Ferguson Limited and is being sent to you for your information.

To Heads of Operating Divisions

As you know, we have had under consideration here in Toronto rearrangement and reorganization of the responsibilities and functions of Head Office executives. I believe this has been discussed with you in a broad manner.

On this past Friday, I met with our Head Office executives and outlined to them what appears to me to be a satisfactory solution to achieve smoother and more effective operations. As you will see from the attached notes and instructions, the Head Office executives are composed into two groups: Head Office *Divisional* Executives and Functional Executives. The Head Office *Divisional* Executives are my delegates working with the *Resident Managers* of the *Operating Divisions*. The Functional Executives perform more specific responsibilities either in the Home Office or throughout the entire Company; they also serve as consultants and advisers.

As I told the Head Office Executives, I do not propose, at least at this time, to issue an organization chart. I am fully aware that this new arrangement will require a certain amount of time and a co-operative and open-minded attitude on the part of all at Head Office and in the Operating Divisions to fill in all the working *inter-relationships*. As you well know, the amalgamations of the past several years have multiplied at a rapid rate the complexities of managing Massey-Harris-Ferguson.

The attached notes and instructions, being forwarded to you for your information and guidance, have been drawn primarily for the Head Office, and I made no

(Exhibit 2B, J. Haggard, Cont'd)

attempt to get into the organizational set-ups of the *Operating Divisions*. On the other hand, in defining the responsibilities of the Head Office Divisional Executives, it was necessary clearly to indicate that this new arrangement does not dilute or limit the responsibility of Resident Executives in charge of Operating *Divisions*. Rather, as a result of the world-wide dispersion of our business in a highly competitive and fast-moving era, their responsibility is greater than ever.

I am confident that all Executives will perform to their utmost to persevere in the tremendous competitive battle now under way in North America, and to forestall the ever-threatening competition in our other world-wide markets.

Will you please circulate copies of this letter and the attached memorandum to the senior members of *your division* so that there will be a complete understanding of the changes which are being made in the Head Office organization.

/ss/ Jas. S. Duncan
Chairman and President.

J.S.D.:b
att.

(Exhibit 2B, J. Haggard, Cont'd)

May 3rd, 1955.

NOTES ON ORGANIZATION AND DELEGATION OF RESPONSIBILITIES

HEAD OFFICE
Board of Directors
Executive Committee

J. S. Duncan	Chairman of the Board and President	
H. H. Bloom	First Vice-President. President, United States Company	Ranking executive after the President, also President of the United States Company. His chief responsibility will be the over-all operations of the Canadian and United States **Divisions**. In addition, he should at all times be consulted on major issues and in the absence of the President, has the deciding voice as to policy or action.
R. H. Metcalfe	Vice-President, General Administration	Responsible for general administration. Also: Capital appropriations and expenditures; Supervision of forecasts and control of budgets; Supervision of price studies, prices and establishment of prices, pertaining to the Parent Company and **all subsidiaries.** In the absence of the President and the First Vice-President, Mr. R. H. Metcalfe will be responsible for policy and decisions.
E. G. Burgess	Vice-President	Responsible for the forward planning of manufacturing facilities for **North America,** location of new facilities, equipment, machine tools, also supervision of North American Production Engineering. He will continually review all machine costs in **North America** and bring in recommendations concerning those which may be unprofitable. He will also be available for consultation on manufacturing problems in all **Divisions.**
A. A. Thornbrough	Vice-President	United Kingdom operations, relations with the Standard Motor Company, Coventry; corporate and management relationships with Standard-Hotchkiss Company, Paris, and relationship between the Standard Motor Company and North America.
W. Lattman	Vice-President	Western Hemisphere Export Division and Continental European operations.
M. F. Verity	Vice-President	Australian Division operations, Safim operations, supervision of the Machine Tool Division and Sunshine-Waterloo Company.
H. G. Klemm	Vice-President, Engineering	Responsible for engineering in the **Western Hemisphere** and is also Chairman of the Co-ordinating Committee operating between the Eastern and **Western Hemisphere Divisions.**
C. N. Appleton	Vice-President and Secretary	Secretarial functions, including: Salaries Pensions Bonus Payments Incentive Plans Insurance pertaining to the Parent Company and **all subsidiaries.** Parent Company Dividends.

(Exhibit 2B, J. Haggard, Cont'd)

C. F. Herrmeyer	Financial Officer	Responsible for general treasury matters, including: Control of Credit (Chairman of Export Credit Committee) Corporate Financing Banking arrangements and credit lines Cash Management Cash forecasts and statement Inter-company payments and exchange **Inter-company dividends** Short-term investments pertaining to the Parent Company and **all subsidiaries.** Approval of Canadian Company signing officers.
E. H. Metcalfe	Comptroller	Responsible for general accounting, costings, pricing records, preparation of **budgets and budget controls** for the Parent Company and **all subsidiaries.**
C. B. C. Scott	Director Industrial Relations and Personnel	Responsible for personnel and industrial relations, wage structure, employees' benefits, health and safety measures, personnel regulations and practices, plant community relations and union relations **in North America,** and will act as consultant and advisor to **all subsidiaries.**
J. Martin	Director Public Relations	Responsible for public relations **in North America** and will act as consultant and adviser to all subsidiaries.
OPERATING DIVISIONS		
E. W. Young	Vice-President, Managing Director	Eastern Hemisphere Division
G. H. Thomas	Vice-President, General Manager	Canadian Division
C. P. Milne	Executive Vice-President, U. S. Company	**United States Division**
E. Abaroa	General Manager	Export Division—Western Hemisphere
L. T. Ritchie	Vice-President, Managing Director	Australian Division (other than Ferguson).

NOTE:

There are two additional Vice-Presidents of the Parent Company in the persons of Messrs. G. T. M. Bevan and W. W. Mawhinney who will continue in their present capacities in the Eastern Hemisphere Division.

GENERAL

1) The Head Office *Divisional* Executives will act as delegates of the President and will keep him suitably informed concerning the activities of the *Division* assigned to them. They will assist the *Operating Division* in their planning, in the formulation of their policies, *hold a watching brief over all their*

(Exhibit 2B, J. Haggard, Cont'd)

operations, draw their attention to any action which may appear to be *contrary to the Company's policy*, or undesirable from any other point of view. They will also ensure that the *Operating Division* is making proper progress, is operating profitably, is pursuing a satisfactory price policy in relation to costs and that personnel policies are adequate and satisfactory.

All problems normally will be cleared between the senior executive responsible for the *Operating Division* and the Head Office *Divisional* executive. In the event of differences arising, the problem must be brought to the attention of the President for decision by either or both of these officials.

2) Functional executives will be accountable for the satisfactory operation of the services for which they are responsible throughout *all Divisions* and Head Office. The day-to-day problems should be cleared through Mr. R. H. Metcalfe, Vice-President, General Administration, reserving matters of high policy only for decision by the President.

3) Resident executives in charge of *Operating Divisions* carry full responsibility for all phases of the activities of their respective Divisions. Whereas they are entitled to clear any matters directly with the President, the desirable procedure, as already indicated, should only be departed from on exceptional occasions.

4) With regard to channels of contact, these notes on organization structure define lines of responsibility, authority and accountability, but they do not indicate or limit channels of contact or flow of information, between or among members of the organization.

(Exhibit 2B, J. Haggard, Cont'd)

Organization policy permits and expects the exercise of common sense and good judgment, at all organization levels, in determining the best channels of contact for expeditious handling of Company work. Contacts and flow of information between people and components of the organization should be carried out in the simplest and most direct way practicable. In making such contacts, however, it is the duty of each member of the organization to keep his superior promptly informed regarding any matter:

(1) For which his superior may be held properly responsible by others;

(2) As to which there is, or which is likely to cause, disagreement or controversy, especially between different sections of the organization;

(3) Which requires the advice of his superior or co-ordination by his superior with other divisions of the organization; or

(4) Which involves recommendations for change in, or variance from, established policies.

5) It will be the responsibility of all *Divisional,* Functional and Operational Executives to see that, in periods of extended absence from the office, another executive be appointed temporarily to carry on. At no time must the responsibilities of one of these executives remain unattended to during holidays or absences on the Company's business. The choice of the party carrying on the function of the absentee Head Office Executive will be made between himself and Mr. R. H. Metcalfe and all services concerned will be notified.

* * *

Stipulated Exhibit 00823—A thru H. Bloom to Milne

MASSEY-HARRIS-FERGUSON
Limited

Manufacturers of Farm Implements for Over 100 Years

Head Office Toronto 3, Canada

Office of the First Vice-President

January 17, 1956.

TO: Messrs. C. P. Milne, Executive Vice-President, Racine; G. H. Thomas, Vice-President and General Manager, Canadian Division.

Dissemination of Information about New Machines

In keeping with our desire to continually improve the arrangements made to organize the dissemination of information on new products to all sales outlets, I should like to outline the procedures to be followed in North America, which I feel, with the cooperation of all concerned, will assure prompt and efficient dissemination of information about new developments in North America to all those in the Company's world-wide organization concerned with selling our products.

Mr. Klemm, in his "Engineering Policies and Procedures" has outlined in detail the aspects of this problem which relates specifically to the Engineering Departments. This has been done in Parts II, III, and IV of his Engineering Procedures dated December 15th, 1954, May 20th, 1955 and October 4th, 1955, respectively, and dealing with the "Performance Operation and Special Feature Specifications," the "Engineering Approval of Equipment," and the "Development Request" procedure respectively. The purpose of this directive is to expand upon these established procedures in relation to aspects

additional to those of a purely Engineering Department nature.

The dissemination of information about new North American products will be synchronized with the Engineering development of these products according to the following procedure:

Step One

New development will be initiated in accordance with the "Development Request" procedure, outlined in Part IV, of "Engineering Policies and Procedure." *It is recognized that in the case of major machines such as Tractors and Combines, the impetus for development may come more from Top Management* than from Sales or Research Departments but, nevertheless, the procedure outlined in Part IV, of "Engineering Procedures" should apply, no matter what the original source of request for new development.

The Minutes of the Product Committee Meeting will record the approval of the "Development Request," and will be the first indication to those executives appearing on List "A" attached, that the development is to be undertaken.

During the process of development, the Chief Engineer of the Engineering Department concerned will keep the Chairman of the Product Committee informed on the progress of development and this progress will be periodically reviewed by the Product Committee, and recorded in the Minutes of their Meeting which will be distributed to Executives on List "A."

(Stipulated Exhibits 823A-H, Cont'd)

Step Two

As the Engineering Department completes its development and field testing of the prototype machines, the Production Engineering Department prepare a complete Manufacturing Report, showing the estimated cost of toolage and tooling, as well as the estimated unit cost price of the machine.

This manufacturing cost information will be conveyed to both the Chairman of the Product Committee and the Comptroller's Department of the producing unit. The Comptroller's Department of the producing unit will make an estimated list selling price for the unit and convey this information also to the Chairman of the Product Committee.

At subsequent meeting of the Product Committee, with all the considerations connected with manufacture and sale price of the machine available, the Product Committee will make its recommendation of the quantities of the machine for which production should be undertaken. Again, this will be recorded in the Minutes of the Product Committee Meeting and distributed to the Executives on List "A." It is important that the Minutes record all pertinent considerations including tentative selling price.

Step Three

Upon approval of the machine for production, it becomes the responsibility of the Supply & Control unit responsible for the production of the machine to keep those concerned with its introduction into the Company's range, regularly informed of its progress towards completion. This should be done by regular Progress Reports issued by the respective Supply & Control units to those Executives listed on List "A" attached.

(Stipulated Exhibits 823A-H, Cont'd)

At the same time that Manufacturing Departments are progressing with the production of the machine, Product Education, Sales and Service Departments must also be actively planning their programmes in readiness for the introduction of the machine into the line. For this purpose, "Engineering Policies and Procedures," Part II, establishes the steps to be taken by the Engineering Department for passing the information on to other departments and these steps will be coordinated in other departments as follows:

(a) as soon as practicably possible after the completion of the approved design, the Engineering Department who has developed the machine will issue their "Performance, Operations and Special Features Specification" to the Executives appearing on List "B" attached. This will be the authoritative document relating to the machine that will enable the distributing organizations to more clearly estimate their early sales requirements, to develop publicity, sales and technical literature, and to plan product educational programmes.

(b) the Product Education Department of the producing unit, having become fully familiar with the equipment during the last stages of field testing (as prescribed in "Engineering Procedures," Part II) will be responsible for the immediate production of product education material and programmes relative to their own domestic market requirements. However, in order to assist other Sales Departments, who have not been in a position to have the close contact with the local Engineering and Field Testing Departments, the Prod-

(Stipulated Exhibits 823A-H, Cont'd)

uct Education Department of the producing unit will supply copies of their planned material, and outlines, of their educational programme to the Product Education Department of the other North American sales unit (i.e. either Canada or U.S.A.) as well as to the Product Education Department of the Western Hemisphere Export Division, Toronto, and the Eastern Hemisphere Product Education Department, Coventry and the Australian Division, Sunshine, Australia. This, of course, only applies when the machine is applicable to markets outside the domestic market of the producing unit.

(c) The Service Department of the producing unit, having received a prototype of the new equipment (as prescribed in "Engineering Policies and Procedures," Part II) will prepare the service manuals and instructions related to the machine, and will send copies of these manuals once prepared, immediately to *the Service Departments* of the other *selling units,* i.e., either Canada or *the U.S.A.,* as the case may be, as well as to the Western Hemisphere Export Division, Toronto; Eastern Hemisphere Division, Coventry; and the Australian Division, Sunshine, Australia.

(d) Similarly, each of the Publicity and Advertising Departments in the domestic Sales Department of the Producing unit will make copies of their material and plans available to the Advertising Departments of the remaining *Sales Divisions,* including the *Western Hemisphere* Export Division, the Eastern Hemisphere Division and the Australian Division, as this material becomes available for domestic sales.

(Stipulated Exhibits 823A-H, Cont'd)

We trust that you will be able to arrange to have this outlined procedure followed with care and understanding by all those concerned with these matters in your Division.

/ss/ H. H. Bloom
First Vice-President

HHB:am. atts.
Copies to Messrs. H. G. Klemm
W. Lattman and E. Abaroa.

LIST "A"

Circulation of Minutes of Western Hemisphere Product Committee Meetings

Members of the Committee	Others
Western Hemisphere Engineering Head Office Toronto	
H. G. Klemm (Chairman)	Jas. S. Duncan
R. W. King	*A. A. Thornbrough
P. C. Mortenson	H. H. Bloom
D. F. Dahline (Recording Secretary)	E. G. Burgess
	*R. H. Metcalfe
	*W. Lattman
	*M. F. Verity
U. S. Division	
C. P. Milne	
L. M. Sweeney	
W. M. Dreier	
J. L. Hooker	
B. R. Bermann	
E. A. Adams	
L. S. Pfost	
J. Zimmerman	

(Stipulated Exhibits 823A-II, Cont'd)

Canadian Division

G. H. Thomas
G. A. McMillan
J. W. Cowie
W. A. Watts
L. L. Herrington

Western Hemisphere Export Division

E. Abaroa
*W. Reed-Lewis
*C. Galbraith

* Not included for Meetings I to IV.

LIST "B"

Circulation of "Performance Operation and Special Features Specification" issued by Western Hemisphere Engineering Department

United States Division

C. P. Milne	Executive Vice-President
E. A. Adams	Vice-President, Marketing Research Dept.
L. J. Wolf	Vice-President and Treasurer
K. H. Krause	Vice-President, Manufacturing
L. M. Sweeney	Vice-President, Sales
W. M. Dreier	General Sales Manager Massey-Harris
J. L. Hooker	General Sales Manager Ferguson
Dean Carpenter	Advertising & Sales Promotion Manager—Massey-Harris
S. S. Roberts	Advertising & Sales Promotion Manager—Ferguson

(Stipulated Exhibits 823A-H, Cont'd)

J. Zimmerman	General Service Manager
L. V. Garver	Production Education Manager Massey-Harris
E. L. Barger	Product Education—Ferguson

Canadian Division

G. H. Thomas	Vice President & General Manager
G. W. Wells	Assistant General Manager
G. A. McMillan	Sales Manager
D. J. McLeod	Advertising Manager
L. L. Herrington	Service Manager
J. R. W. Young	Product Training

Western Hemisphere Export Division

E. Abaroa	General Manager
W. Reed-Lewis	Assistant General Manager
J. C. Boyd	Manager, Product Education & Training
C. Galbraith	Manager, Eastern Hemisphere Liaison Dept.

Eastern Hemisphere Division

E. W. Young	Vice-President and Managing Director
G. T. M. Bevan	Vice-President and Director of Engineering
W. W. Mawhinney	Vice-President and General Manager
L. G. Reid	Deputy Director of Engineering
W. B. Wedd	Vice-President and General Manager

(Stipulated Exhibits 823A-H, Cont'd)

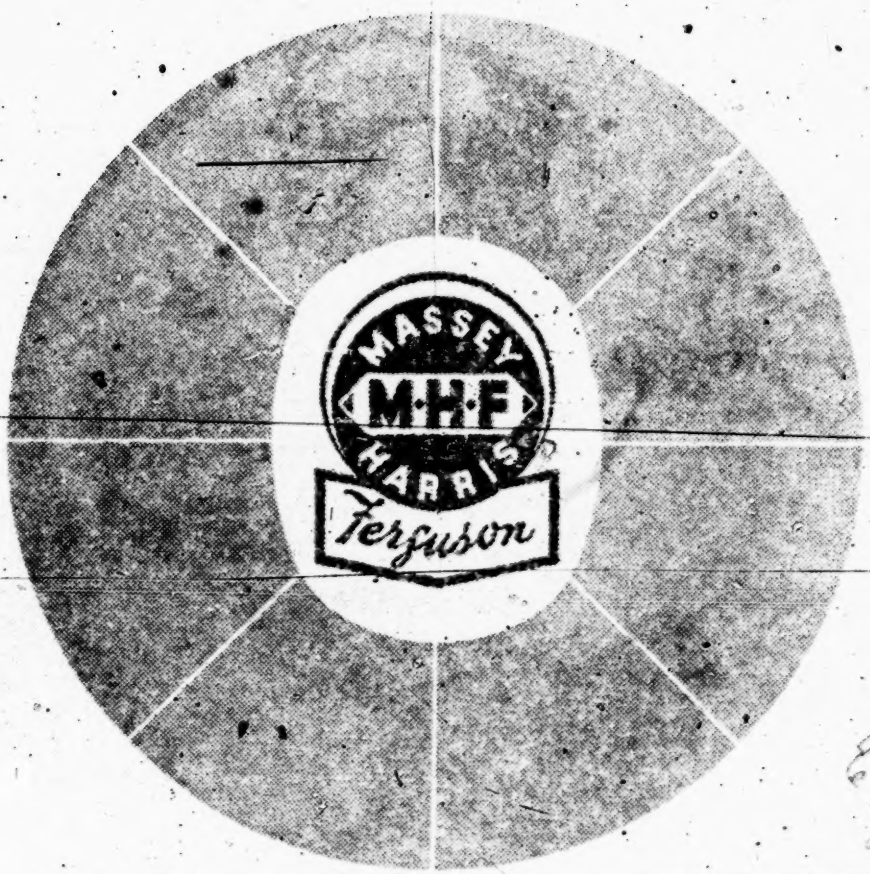
Western Hemisphere Engineering

H. G. Klemm	Vice-President and Director of Engineering
R. W. King	Chief Engineer, Detroit
L. S. Pfost	Executive Engineer & Chief Tractor Engineer
W. A. Watts	Chief Engineer, Canadian Division

Head Office Toronto

H. H. Bloom	First Vice-President
A. A. Thornbrough	Executive Vice-President
E. G. Burgess	Vice-President
C. F. Herrmeyer	Financial Officer
W. Lattman	Vice-President
J. Martin	Director of Public Relations
R. H. Metcalfe	Vice-President, General Administration
M. F. Verity	Vice-President

H. H. Bloom



Exh 10 to Bloom

1953

ANNUAL REPORT

Note:

Pages 97b - 106b are on card 6.
Pages 107b - 116b are on card 7.

C. R. Haggard

Exhibit 14—Haggard.

The following Exhibit 14 to Haggard came from his files, and was written by Bloom during the time he admits he was in complete control of the United States subsidiaries, and charged with the duty of merging them. If it be claimed he wrote that letter as President of Massey-Harris Company—he had no business addressing it to the personnel of the "FERGUSON DIVISION."

December 31, 1953

E. A. Adams	H. L. Hughes	A. Skover
J. H. Garrick	R. L. Jerstad	R. J. Smith
K. H. Krause	R. Johnson	C. H. Stewart
C. P. Milne	L. W. Kahler	C. R. Swanson
L. M. Sweeney	T. C. Keyes	C. A. Swenson
	J. S. Kis	W. S. Temple
	C. Knott	R. Tessmer
G. Barsamian	M. Linden	E. J. Teubner
F. R. Bloom	C. Londre	G. H. Thomas
J. E. Bowden	R. Ludwig	E. W. Todd
R. Broberg	C. Meissner	O. B. Ulstad
J. J. Busch	A. Meyer	C. J. Vosika
W. G. Butrum	M. Michna	R. E. Walker
J. H. Calvert	P. C. Mortenson	J. Wilson
J. D. Campbell	H. L. Nicholls	Joe Zimmerman
J. A. Chobanian	R. Nielsen	
W. Clifford	J. E. Nilles	
G. A. Doolin	R. M. Olsen	FERGUSON DIV.
W. M. Dreier	E. J. Ott	P. A. Brown
C. V. Everett	J. Parsons	J. L. Gilliam
C. L. Feest	L. W. Petersen	J. L. Hooker
L. W. Garver	H. G. Peterson	R. E. Kidder
M. L. Gervais	W. S. Peterson	E. W. Lane
R. Hackler	S. S. Pezanoski	E. J. Latkowski
G. W. Haines	L. S. Pfost	S. S. Roberts
A. Hollo	M. Robotka	A. A. Thornbrough
E. Hoppe	H. A. Schink	L. A. Webster

C. R. Haggard

SUBJECT: TELEPHONE EXPENSES

On various occasions during 1953, we urged the rigid control of the use of long distance telephoning, and in response, most of our departments did a good job in this respect. However, since the amalgamation of Massey-Harris and Ferguson, our telephone expenses have spiraled upward. Lately, there are just too many calls here, there and everywhere, and particularly *between Detroit, Racine and Toronto by various departments;* not only relating to Massey-Harris-Ferguson activities, but also with respect to other general day-to-day business operations.

You are fully aware of the type of year in which we are operating, based on our current budget and the urgent need of expense control. Certainly, the use of the long distance telephone is an item that can be controlled. We are doing less business; we have more time to write. Between air and rail service, we have almost overnight mail service anywhere. This, coupled with the use of the teletype, should make it possible for us to reduce the use of the telephone.

In light of the above, I am looking for a sharp reduction in the use of the telephone and the resultant expense of all departments involved.

/ss/ H. H. Bloom
President

* * *

C. R. Haggard

Exhibit 33A-B—Haggard.

Bloom, writing as First Vice President of the Limited Company, tells the subsidiary what it must do with respect to combines. He again emphasizes that the subsidiary is only a division, and calls the branches "our

branches." The following is the entire letter. Emphasis supplied.

MASSEY-HARRIS-FERGUSON LIMITED

April 5th, 1956.

MEMORANDUM

To: Mr. C. P. Milne, Executive Vice President, RACINE.

From Mr. H. H. Bloom, First Vice President, TORONTO.

Subject: *Critical Combine Situation*

In recent weeks I have drawn to your attention the serious situation that exists in respect *to combine shipments to the U. S. Branch territories,* in relation to manufacturing orders, and have pointed out the necessity of everyone realizing what the facts are and the action necessary, but the response to date has been completely inadequate.

Now here are the facts—throughout the winter and up to April 1st we heard all about the tax problems—and dealers will not take delivery of machines because of tax, etc., etc. Now the tax dates are past. *The U. S. Division* has manufacturing orders on the factory for 6,400 machines after affecting the net reductions and adjustments recently requested. Against this 6,400 requirement, to date *the Canadian Division* has actually shipped to you 2,300 machines, leaving a balance to go of 4,100. Now we know that, with the exception of four or five hundred machines United States trade want their combines to leave the factory here not later than June 1st, and that means June 15th or June 20th on the territory, which, of

course, is entirely too late for territories such as Kansas and some of the early crop territories.

Recognizing that the above requirement dates *of our branches* reflects the actual situation it means that between next Monday and June 1st we have actually 40 shipping days left and, therefore, we require to ship, on account of U. S. requirements, 90 machines per day, plus Canada, plus Export. The securing of flat cars alone, coupled with the peak load that this throws on our shipping facilities, presents in itself a major problem, to say nothing of the thousands of dollars that we have been spending and are spending in taking machines out to our storage facilities in Long Branch and the Exhibition grounds here where all of our storage facilities are now plugged and we have approximately 2,000 machines stored on account of U. S. orders.

This letter is intended, once and for all, to point out to your sales divisions and *the branch executives of our company's U. S. Division* that we must have action, not in the form of a few shipping orders rolling in here to barely take part of the production but orders that will permit the shipment of 100 machines per day, every day between now and June 1st. If this is not done then *no U. S. branch* will be justified in coming along right near the season and complain about not being able to get machines, loosing business etc. Furthermore, we are either badly out on our requested provision for 1956 and, if that is the case, the respective branches must carry the responsibility for misjudgment, which, in turn, will have a serious effect on our operations, or alternately as good business men we must realize that for our company and our dealers to secure maximum sales results with that of competition our dealers surely at this date should have carloads of combines rolling to them, not only for display but for delivery purposes.

C. R. Haggard

It all adds up to one simple thing—*that is that every one of our branch managers must*, without further insistence on the part of the top management, tackle this problem in respect to their own provision for their own territory, and leave no stone unturned in order to see that shipping orders do roll in in volume, in relation to their provision, starting immediately. In this case where *the branch manager* does not handle this he will be expected to carry full responsibility for loss of business, poor sampling conditions, etc. I think this makes it clear that to roll the machines on order it can only be accomplished in an orderly way by carrying out the programme as outlined above.

/ss/ H. H. Bloom
First Vice President

HHB:ab
c.c. Messrs. L. M. Sweeney
W. M. Dreier
M. L. Gervais
All *U. S. Branch Managers*

* * *

C. R. Haggard

Exhibit 3—Haggard.

The following Exhibit 3 to Haggard shows how indiscriminately Duncan acted. He wrote that exhibit on stationery of the subsidiary, signed it as "Chairman of the Board," and in the first sentence refers to "the Company's business throughout the world." No one has ever claimed that the subsidiary does business throughout the world. In the second paragraph of the letter he says that Thornbrough was an officer and director of Harry Ferguson, Inc. at the "time of its acquisition by this Company." All announcements and correspondence state that Ferguson, Inc., was acquired by the Limited Company:

C. R. Haggard

MASSEY-HARRIS-FERGUSON, INC.
Racine, Wisconsin

Manufacturers of Farm Equipment for Over 100 Years

October 12, 1955

To: Vice Presidents
Department Heads
Works Managers
Branch Managers

With the rapid development of the Company's business *throughout the world*, it has become necessary that the Management of the Company be further strengthened by the appointment of an additional senior executive. It now gives me great pleasure to announce the appointment of Mr. Albert A. Thornbrough as Executive Vice-President.

Mr. Thornbrough, who was Vice-President and a Director of Harry Ferguson Incorporated *at the time of its acquisition by this Company*, has had a wealth of experience in the field of agriculture and the farm implement industry.

A graduate of Kansas State College and Harvard University, he engaged in research work with the Department of Agriculture and later, during World War II, in the Office of Price Administration at Washington, he organized the Farm Machinery Branch and assisted in establishing the Machinery Division.

After a period of military service during which he assisted in establishing the Engineers Amphibian Command and other Army Organizations, he joined the "Ferguson" Company in 1946. Following the amalgamation, he became a Vice-President of the United States Com-

C. R. Haggard

pany and early this year was appointed to the position of Vice-President of the Parent Company to co-ordinate and supervise United Kingdom operations and Ferguson tractor programs with Standard Motor Company, all of which has been carried out with marked success and credit to him.

Mr. Thornbrough has become well-known to the whole organization, and I bespeak for him your full co-operation in his new responsibility.

/ss/ Jas. S. Duncan
Chairman of the Board

JSD:fa

J. L. Hooker

Hooker fell in line with complete integration.

Exhibit 181 (stipulated):

October 29, 1954

Mr. L. M. Sweeney
Mr. J. L. Hooker

FERGUSON IMPLEMENT PROGRAM—CANADA

I have just reviewed the contents of a communication directed to Mr. G. H. Thomas under date of October 15th by Mr. J. L. Gilliam. Since this report is most revealing with regard to anticipated production and availability dates of Implements to be manufactured by *our Canadian* Plants, I am attaching a copy for your information.

While I fully recognize that *our Management* did not invite the strike bound situation which exists at our Toronto Plant notwithstanding, unless the wheels of progress start to turn very quickly it is quite apparent that our sales will suffer substantially during the high volume sales season due to non-availability of merchandise.

If my memory serves me correctly, I believe you advised me during the last day or so in conversation that Mr. Bloom was giving this *his undivided attention*, fully recognizing the severity of the situation.

JLH/jr. J. L. Hooker
cc: Mr. H. H. Bloom
Mr. C. P. Milne
Mr. L. A. Webster
Mr. E. W. Lane
Mr. G. H. Thomas

H. H. Bloom

Stipulated exhibit 851.

This letter from Duncan, President of the Limited Company, dated January 26, 1954, shows how completely Duncan regarded all interests in the United States as integral parts of the Limited Company. He got so far ahead in his thinking that he addressed the letter to Bloom as President of the Massey-Harris-Ferguson Co., Racine, seven months before that company came into existence, and at a time when petitioner's lawyers were advising against a merger of the United States subsidiaries because of Federal Anti-Trust Laws:

MASSEY-HARRIS-FERGUSON LIMITED

January 26th, 1954

MEMORANDUM

To: Mr. H. H. Bloom, President, The Massey-Harris-Ferguson Co., Racine

From: Mr. J. S. Duncan, President.

In going over the 1954 Budget, which shows that, in relation to 1953, we have cut $2,546,000, or 20.6% from our expenses, not including Bank Interest, Bond Interest and Pensions, which, by the way, are also down, but it also indicates that when we add in the Ferguson expenses for North Americ[illegible] which are no less than $6,858,000, the total, including Ferguson, shows an increase of $4,470,000 or 15.9%.

I recognize how difficult it is to get expenses under control *until such time as the authorities* will allow us to throw both organizations together, *as had originally been contemplated.* On the other hand, the breakdown of the expenses shows some items which seem to me to be

H. H. Bloom

very much out of line; for instance, an item of Treasurer's Department $322,000, Administrative $421,000, Detroit Distribution $1,133,000, Public Relations $298,000. Then there is a small item of $17,000 cafeteria, why must we lose $17,000 on the cafeteria? In addition to this, we have an item of $790,000, being the United States Branch Sales Expense. All this looks shockingly high on a volume of $38,000,000 including exports.

I should be glad to get your reaction to this situation. I am just wondering whether, in the light of the existing sales situation, we have gone far enough in reducing expenses.

/ss/ JSD
President

J.S.D.:on

H. H. Bloom

* * *

Stipulated Exhibit No. 00072
c.c. Mr. C. P. Milne, Racine

Toronto, July 20th, 1955.

Mr. E. A. Adams, Vice-President, Marketing Research, Racine.

H. H. Bloom, First Vice-President.

Field Survey covering Ferguson Foragers and Balers.

You are aware that during 1955 we tooled up and manufactured approximately 600 Ferguson Foragers and Balers. The exact quantities can be determined from the Racine records. You can also ascertain from Racine the shipments and destinations of each of these units.

Both the Ferguson Forager and Baler, as you are aware, are high quality products and, therefore, sell in the top price range. As a matter of fact, the list price of

H. H. Bloom

(Stipulated Exhibit 00072, Cont'd)

these units at the present time is barely on a break-even basis. Some field troubles have developed which appear to be largely traceable to first-run production problems and some engineering problems but basically both machines appear to be good.

What we now want to determine is the acceptability and future of these two machines and we feel that it is a matter of utmost urgency and importance that your department conduct a full study of the situation at this time so that we may have the benefit of your findings prior to manufacturing commitment as to quantities that should be provided in our 1956 programme. *I am sure that you are aware of what is required and that you will prepare a suitable questionnaire so that your field organization will secure the information desired.* I would urge that good field coverage and contact with users is made so as to get the users individual reaction.

1) Determine users reaction to the side mounted principles, advantages and disadvantages.

2) Performance of machines in the field and approximate acreages harvested.

3) Reaction of users and neighboring farmers as to purchase of this type of quality machine to meet their needs at a higher price as compared to lower priced Foragers and Balers.

4) Specific complaints and suggested improvements made by owners.

Would you endeavor to have your report submitted not later than September 15th, 1955.

/ss/ H. H. Bloom

HHB:fg
c.c. Mr. C. P. Milne
Mrs. H. G. Klemm
Mr. G. H. Thomas

H. H. Bloom

(Stipulated exhibit 297-A-B).

This exhibit shows how completely Toronto took over Harry Ferguson, Inc. It indicates clearly that the Limited Company was to manufacture the Ferguson line and say how it was to be distributed. It is one of the earliest written indications of the Limited Company's intent to steal the big Ferguson tractor. See italicized portion.

MASSEY-HARRIS COMPANY
Limited
Head Office Toronto 3, Canada

James S. Duncan, Chairman and President
October 14th, 1953.

(dictated Oct. 12th)

Mr. H. H. Bloom,
c/o Harry Ferguson, Inc.,
Detroit 32, Michigan.

Dear Mr. Bloom,

I am attaching hereto two copies of my cable to Mr. Young, quoting the cable which I sent to Sir John Black. I am sending you two copies, because I think it would be well that you should pass on a copy to Mr. Klemm, so that he is fully in touch with the situation.

Might I make the following suggestions:

(a) Prior to Klemm's departure for England, he should give you a tentative estimate of the date on which the experimental front end assemblies could be released for test.

H. H. Bloom

(Stipulated Exhibits 297A-B, Cont'd)

(b) The date on which he will be prepared to release the Continental engine for production.

(c) Find out what progress has been made with reference to obtaining a cost for this engine.

(d) That Mr. Klemm should go over to Coventry prepared to indicate to them over there all the parts which he proposes to build for the big tractor or to have built for it in the United States so that they could ascertain the parts or assemblies which they will be sending to us and give us the cost on same.

If we do not get this cost from Coventry, we will not be in a position to make an intelligent estimate of the number of tractors which we can sell in the United States.

(e) Mr. Klemm should also give you an estimate of the date at which he expects to have the cultivating and planting machinery of the mid-mounted type available for test.

All this, of course, as you will recognize, is working up to saying that we must, as soon as possible, be in a position to make up our minds as to when *we could safely launch the big tractor in the United States.* It is all very well to talk of the 15th of September, but if the American portion of the tractor has not been tested or the implements have not been tested, I do not see how this could be done without running undue risks, to say nothing of the risks which we will be running with the English portion of the tractor.

Yours very sincerely,

/ss/ Jas. S. Duncan
President

J.S.D.:on

H. H. Bloom

(Stipulated Exhibit 810)

This shows clearly that distributors were to have a Ferguson mounted combine, and that this was in the making on the date of the amalgamation. The letter indicates Toronto's intention that the distributors should never have a combine.

MASSEY-HARRIS COMPANY, LIMITED

TORONTO, November 27, 1953.

MEMORANDUM

To: Mr. H. H. Bloom, President, RACINE,

From: Mr. E. G. Burgess.

Subject: *Costing Ferguson Mounted Combine*

You will recall that, while we were in Detroit, we had Harris Bulmer and a couple of men come over to get a rough estimate of the cost of *The Ferguson Mounted Combine.*

Doward Henry has been writing to Mr. Duncan in England about this, with a view to setting selling prices, and I pointed out to him that I did not think the selling price should be based on that very cursory examination.

Do you not think that someone from our Cost Department here should go over to Detroit and sit down with the Detroit people and properly cost this machine out, piece by piece? If we do not do this, we may be in for a shock or a surprise and, to set selling prices on such a cursory cost as was arrived at by Mr. Bulmer is unsound.

/ss/ E. G. Burgess

egb.w

H. H. Bloom

(Stipulated Exhibit 299)

MASSEY-HARRIS COMPANY
(Europe) Limited

Morris House, Berkeley Square, London, W.1

7th December, 1953.

CONFIDENTIAL

Mr. H. H. Bloom,
President,
Massey-Harris Co.,
Racine, Wisconsin,
U.S.A.

Dear Mr. Bloom,

I received your telegram of December 2nd with reference to the adaptation of our Continental engine to the large Ferguson tractor and was very much interested in its contents.

I have discussed the situation with Mr. Ferguson whose re-action at the present time is unfavourable based confidentially upon his annoyance with Klemm for having taken such a strong stand on the redesign of the large tractor, but I am hoping however, that I can get this matter straightened out prior to my departure and, therefore, would not suggest that you do anything about it or discuss the matter with either Klemm or Chambers.

Based upon past experience in these matters I have every reason to believe that we will finish up by doing what has been suggested by Klemm and yourself, providing, of course, that the estimates of engineering expense and all costs savin· which you are expecting to

H. H. Bloom

receive from the Continental people work out as you expect.

Yours very sincerely,

/ss/ J. S. Duncan

1847.11

(Stipulated Exhibit 154)

It is difficult to conceive of more unscrupulous thinking than Duncan evidenced in this letter. Such thinking is only deemed scrupulous by monopolists, who have no scruples. Duncan comes out and says in no uncertain terms that with Ferguson out of the picture they can now appropriate the Ferguson system with the aid and abettance of Ferguson's son-in-law.

MASSEY-HARRIS-FERGUSON LIMITED

March 24th, 1954.

MEMORANDUM

To: Messrs. H. H. Bloom and H. G. Klemm.

From: Mr. J. S. Duncan.

With reference to my letter of March 5th, which was dispatched to Mr. Harry Ferguson from San Antonio, Texas, and dealt with industrial tractor sales in North America and their equipment, I received a letter from Tony Sheldon, stating *that his father-in-law* has returned from the Nursing Home, but is under the care of a specialist in his own house, and is still not in a position to read any mail, or even to take an active interest in any business matters.

(Stipulated Exhibit 154, Cont'd)

Mr. Sheldon has discussed the contents of my letter with Mrs. Ferguson and John Peacock, and they feel that, in that it was agreed in the event of Mr. Ferguson's health being such that he could no longer exercise control over the business, *his rights of control of design of the equipment to go wit hthe Ferguson tractor would lapse temporarily*, that this situation has now arisen and, therefore, that this enables me to go ahead without further reference to him, pending his recovery.

Tony Sheldon went on to say that he thought that his father-in-law would be delighted at my suggestion that a committee should be set up, composed of Messrs. Klemm, Bloom and myself, to act in the meantime. *This will, therefore, be you rauthority to set up this committee and to take all suitable action*, and I trust that active steps will now be taken to have this Industrial Division suitably organized, so that *we can get* our full share of these important sales without further delay. Mr. Sheldon went on to suggest that in the past, Mr. Klemm had always sent photographs of any equipment for which he requested approval, and he thought that perhaps it might be a nice idea for him to send photographs of the equipment which the committee was agreeing to, so that Mr. Ferguson could have a look at these when he has recovered.

'ss/ J. S. Duncan
President

J.S.D.:b
c.c. Mr. J. S. D. Tory
Mr. R. H. Metcalfe

(Stipulated Exhibit 848)

Implements for Ferguson tractors to be manufactured in Canada. Toronto makes all the decisions.

(Stipulated Exhibit 848)

Mr. H. H. Bloom—TORONTO

May 1, 1956.

Mr. K. H. Krause—RACINE,

Mr. P. D. Corkum—TORONTO.

Proposed Manufacturing Locations for Implements Planned for MH-75 and F-65 Tractors

In Mr. Burgess' absence, I am replying to your memorandum of April 23rd, regarding the Corn Pickers for the MH-75 and F-65 Tractors.

I discussed your proposal with Mr. Bloom this morning, and he concurs with you that no further new machines should be manufactured at Batavia. It has been decided, therefore, that the new Corn Pickers will be built in Canada, and I will see that the prints are issued to the Canadian Division.

P. D. Corkum

pdc.w
c.c. to Messrs. H. H. Bloom
G. H. Thomas
P. G. Jacka
E. G. Burgess

• • •

(Stipulated Exhibits 831-833)

This is another exhibit, written by Bloom, First Vice President, to the subsidiary. Having appropriated the TO-35 and converted it into the MH-50, this letter re-

H. H. Bloom

(Stipulated Exhibits 831-833, Cont'd)

cords that the Limited Company was then ready to appropriate the large tractor.

MASSEY-HARRIS-FERGUSON LIMITED

April 19th, 1956.

MEMORANDUM

To: Mr. C. P. Milne, Executive Vice President, Racine

From: Mr. H. H. Bloom, First Vice President

This will confirm plans have been finalized, under the direction of Mr. H. G. Klemm, for the presentation and demonstration of the MH-75 and F-65 series of tractors, with related equipment. Also, various models of M-H-F. 333 and 444 tractors will be used, as well as some other competitor's tractors. The meeting and field tests will be conducted at the engineering experimental farm at Ypsilanti, Michigan, only a short distance from our Detroit operations.

Attendance at the meeting is being confined, in the main, to chief members of the Product Committee and *top executives of our company*, and is scheduled to commence on Tuesday morning at 9:00 a.m., May 15th. Therefore, arrival to Detroit should be planned for the Monday evening prior. Duration of this meeting is indefinite; it is quite possible that two days will be devoted to field demonstrations and trials, followed by general discussions.

In light of the above *the following members of the organization* should please accept this as an invitation to be in attendance at this very important occasion:

H. H. Bloom

(Stipulated Exhibits 831-833, Cont'd)

Head Office Executives:

Messrs. A. A. Thornbrough
M. F. Verity W. Lattman

U. S. Division:

Messrs. C. P. Milne E. A. Adams J. Hooker
L. M. Sweeney W. M. Drejer J. Zimmerman
E. L. Barger L. V. Garver

Canadian Division: L. L. Herrington

Messrs. G. H. Thomas J. R. W. Young
G. A. McMillan
P. G. Jaeka (Production Engineering Dept.)
M. V. Burns (Saskatoon Branch Manager)

Western Hemisphere Division:

Messrs. E. Abaroa
W. Reed-Lewis

The above representatives are exclusive of Engineering Department representatives. Mr. Klemm will invite to the meeting those of the various departmental representatives that he desires to be in attendance.

It is anticipated that Tuesday, May 15th and Wednesday, May 16th will clean up the field trials and meeting, but arising out of same there are a number of items which require to be reviewed further by certain executives, and a further meeting is scheduled tentatively for

H. H. Bloom

(Stipulated Exhibits 831-833, Cont'd)

Wednesday, May 17th. The following to be in attendance:

Messrs.	A. A. Thornbrough	G. H. Thomas	W. M. Dreier
	H. G. Klemm	W. Lattman	L. M. Sweeney
	M. F. Verity	C. P. Milne	E. Abaroa
	G. A. McMillan	J. L. Hooker	

The forthcoming meeting is of extreme importance as we are anticipating that it will enable us to arrive at the right conclusions as to our future tractor line, planning, etc. The holding of this meeting *should be considered as confidential as possible* and not be subject of general discussion with other outside members of the organization.

It is quite possible that a limited number of our associates from the United Kingdom will also attend the above meeting.

The Canadian Division will undertake to acquaint Mr. Burns of our desire to have him in attendance and make the necessary arrangements to this end.

/s/ H. H. Bloom

HHB:ab

Distribution:

Messrs.	J. S. Duncan	E. W. Young
	A. A. Thornbrough	W. M. Dreier
	H. G. Klemm	E. Abaroa
	W. Lattman	G. A. McMillan
	M. F. Verity	L. L. Herrington
	G. H. Thomas	P. G. Jacka
	C. P. Milne	J. R. W. Young
	L. M. Sweeney	E. L. Barger
	E. A. Adams	L. V. Garver
	J. L. Hooker	W. Reed-Lewis

H. H. Bloom

(Stipulated Exhibits 831-833, Cont'd).

In the attached memorandum I have outlined the programme in respect to the forthcoming field trials, commencing May 15th and have indicated that a further meeting will be held following the completion of our general meeting, which will be attended by a select group of executives. The purpose of this further meeting is to discuss problems that have developed following amalgamation, relating to our method of operation, particularly in the U.S.A. and the need to arrive at a solution of the problem of what our long term policy would be:

1) Practicality of merchandising two lines either through separate distributor set-up, or within a two division set-up in our company branches.

2) Determine degree of similarity of products that, in turn, can be successfully merchandised.

3) Problems relating to pricing, policies, discounts, etc.

4) Possible effect of policies decided upon to meet North American problems in other export areas, such as Australia, South Africa, Latin America and others, where the company has two separate organizations, which market is, in whole or part, supplied with products of North American manufacture.

There are undoubtedly many angles to these and other problems to be reviewed at this meeting. We should all give this matter a lot of consideration and further preliminary study prior to the meeting, in order that we will be in a position to submit data, facts and recommenda-

tions to enable us to chart our future policy and agree as to the best course in the long term best interests of the company.

H. H. Bloom

HHB/ab
April 19th, 1956.

Evidence Of Anti-Trust Violations and Conspiracy

Harry Ferguson was an internationally known inventive genius and has devoted his life work to improving agricultural tractors, machines and implements. He invented and obtained patents on what is called throughout this record "The Famous Ferguson System," making possible for the first time the automatic coupling of plows, combines and other implements to the tractor, and automatically controlling the operation of the implements by devices manipulated by the tractor driver. Petitioner's officials recorded in minutes and correspondence that its tractors and implements were becoming outmoded and obsolete. Immediately following amalgamation petitioner's President wrote its stockholders and advertised by radio, newspapers and magazines that the Ferguson System was ten (10) years in advance of the industry.

Harry Ferguson and Harry Ferguson, Inc., were committed to a policy of marketing through distributors and dealers acquired by and trained, and in many instances financed by distributors. Petitioner marketed its products through its own branches, who in turn marketed through dealers. The twenty-six (26) distributors had millions of dollars invested in real estate, buildings, inventories, accounts receivable, and other assets essen-

tial to carrying on successful businesses. Ferguson dealers (approximately 2,000) had large investments in real estate, buildings, inventories, accounts receivable, and other assets essential to carrying on successful businessee. The distributors' dealer organizations were of tremendous value as outlets for the manufactured products.

Contemporaneously with the amalgamation announcement petitioner publicly announced by news release and radio broadcast that the Massey-Harris line and Ferguson line were not competitive but complementary. Distributors and Ferguson dealers were assured by telegrams and letters that the lines would be kept separate and that the Ferguson line would continue to be marketed through Ferguson distributors and dealers exclusively. Those representations and assurances were repeated continuously by petitioner until about the middle of 1955. In early letters (written within thirty days after amalgamation) those assurances were combined with requests and recommendations that Ferguson distributors encourage their dealers to take on Massey-Harris products as a complementary line, and thereafter operate under franchises between those dealers and the Massey-Harris branches along with their Ferguson franchises. Petitioners First Vice President sent two delegates to Memphis and persuaded plaintiffs' President to encourage plaintiffs' dealers to take on the Massey-Harris line and sign Massey-Harris franchises. Plaintiffs' President cooperated and plaintiffs' largest and best dealers were cross-franchised.

During the period August 16, 1953, to the latter part

of 1955, petitioner's officials and the officials of the wholly owned subsidiary, Massey-Harris Company, and the Engineering Departments, recorded in minutes of official and committee meetings and in correspondence that the Ferguson System would be incorporated and built into Massey-Harris tractors and implements as rapidly as the Federal Trade Commission, the Anti-Trust Laws and Distributors could be circumvented.

As early as March, 1954, those minutes and the correspondence recorded:

> "* * * we are implementing a policy, which we have had in mind ever since the amalgamation, namely, that we should inject into the Massey-Harris engineering the modern concept of Ferguson engineering, * * *" (Exhibit 1-F to Klemm).
>
> * * *
>
> "*Anti-Trust.* I regret to advise that on Friday last both the U. S. Massey-Harris Company and Harry Ferguson, Inc., received letters from the Federal Trade Commission requesting specific information covering the merger.
>
> Contact has been made with both Sonnett and Tory and we are proceeding to compile the information requested, all of which will be submitted to the lawyers jointly, and we will be guided in the presentation of same under their direction. We have no knowledge of what prompted the Federal Trade Commission to take the action that they have. We do not feel that it has developed from the territory or any action which we have taken, but could be as a result of information relayed to the Federal Trade Commission by the tax authorities who were recently auditing the Ferguson books at Detroit at

which time they might have advised the Trade Commission of the merger. Alternatively, it might have been prompted by the parent company's amalgamation announcement or as a result of some competitor prompting the Federal Trade Commission about the amalgamation. This development can cause us a lot of grief but, on the other hand, if it proves to be only a formal inquiry and we are successful in satisfying the Trade Commission at this point, it might actually result in the speeding up of the merger bringing the two U. S. companies together. You can rest assured that the matter will be handled carefully and under the full direction of respective legal representatives. Copy of Trade Commission letters enclosed." (Stipulated Exhibit No. 00144, a letter from Bloom, First Vice President, to Duncan, President and Chairman of the Board, December 7, 1953).

* * *

"Insofar as the United States is concerned, it has been decided that the only policy which is advisable, not only from a legal point of view, or from an anti-trust point of view, but from the point of view of getting the largest amount of volume possible, is to keep two separate distributing organizations—those handling the Ferguson machines and those handling the Massey-Harris machines, and it is to implement this policy that we are developing the 3 new Massey-Harris tractors above described."

* * *

"G) The conference agreed that we must keep as much difference as possible between the two lines, but, at the same time, that from the point of view of economic production, certain fundamental features must remain similar. Having agreed, however, that the basic components will be the same, we must go

as far as possible to make the machines different in outward appearance."

* * *

"We all recognize that the most delicate aspect of this situation will be the Massey-Harris version of the TO 35, because we will be giving the Massey-Harris organization a tractor, which, in respect to its main characteristics, will be exactly the same as the Ferguson TO 35, and we recognize that we will meet substantial opposition to this policy. On the other hand, the tractor will have a different outward appearance, a different engine (*) and a different colour scheme. This decision can only be finalized after Mr. John Tory has cleared the legal aspect of the situation." (* It came out with the same engine). (Exhibit 1-E to Klemm, a CONFIDENTIAL "Memorandum" covering certain decisions taken at Conference in San Antonio, Texas, March 7th to 11th, 1954, dated March 12th, 1954.)

"United States has large and good Distributors and Dealers for both M-H and Ferguson, and they fear disbanding of any would mean serious loss of volume. Having moral, and perhaps legal, obligation the U. S. feel committed to maintain two distributing set-ups, even though they recognize the difficulty of merging the engineering and manufacturing efforts to supply two complete lines."

* * *

"Mr. Bloom points out that this means two lines that are not complementary, but are competitive, and holds that neither organization is so good as to justify excluding the other."

* * *

"The President requested study of legal position of amalgamation under Sherman anti-trust law, and

quoted position of M.H.C. who once sold five lines, Osborne, Plano, Milwaukee, McCormick and Deering, and who eventually presented only the McCormick-Deering line. Mr. Tory agreed to pursue the work already underway with such investigation."

* * *

"He (Duncan, President) also raised the point of whether TO 35 can be released for sale by M-H. Counsel preferred consultation before expressing final legal opinion."

* * *

"The meeting took decision that Mr. Tory will check the legal aspect, and Mr. Klemm is to suggest an M-H version of TO 35 at least, and the TO 60 also." (Exhibit 3 to Klemm—Minutes of Executive Meeting at San Antonio, Texas, March 10, 1954).

* * *

"Propose that we maintain two Sales Divisions for Massey-Harris and Ferguson lines respectively. This is the announced policy of the United States Company and any basic change could cause serious trouble in Washington with the Federal Trade Commission. This Department is presently investigating the amalgamation."

* * *

"With regard to 1956. The Massey-Harris Sales Division has recommended a Hybrid Version of T.O. 35 Tractor and also a Hybrid Version T.E. 60 Tractor. These developments are dependent upon satisfactory clarification of the legal position. If these complications cannot be overcome, we would recommend substantial modification to Models 23 and 33 Tractors." (Exhibit 2 to Klemm, pps. 3 & 5-6).

* * *

Anti-Trust Violations and Conspiracy

"*PROBLEM*: Questions arising re Corporate Consolidation of H. F. Inc. and the M-H Co.

After consultation by telephone with Mr. Sonnett (Mr. Ferguson's Solicitor) Mr. Tory advised that no steps be taken at this time to merge these two companies. After Dec. 21, 1953 the situation can be reviewed in relation to anti-trust and anti-merger legislation and in the light of government policy." (Stipulated Exhibit 311A-C).

"Since Mr. H. H. Bloom's return from England, he has had meetings with the Sales Department and has informed us that the present TO-60 program has been completely shelved and, in the meeting this morning, he asked that we write you requesting that you withdraw all material commitments and production schedules on the above subject Implements.

This decision and information is extremely confidential and we prefer to have as little discussion about the further delay of the TO-60 Tractor program as is humanly possible, until such time as there ca nbe an orderly and well-timed announcement to the trade." (Stipulated Exhibit 204, DEPARTMENTAL COMMUNICATION, May 19, 1954, from L. A. Webster—Racine to G. H. Wells—Toronto).

* * *

"If you share my views and agree with my conclusions and recommendations, and in the event the TE-60 project would be shelved, it may, for reasons of explanation outside or within the company, be desirable to find a single, positive reason without making it necessary to explain all the ramifications, and I have a suggestion to offer:

* * *

> In view of all the circumstances, it would be my recommendation that we abandon the TE-60 tractor and immediately curtail any further engineering work in connection with this project. Furthermore, I would recommend that we stop all tooling of the implements for the TE-60 tractor and carry on the engineering and development of those implements which would be applicable to the MH-70. I would further recommend that we continue the development and testing of the Ferguson Diesel engine so that this engine will be available for the MH-70 tractor." (Exhibit 14A-N to Bloom, letter dated June 10th, 1954, from Klemm to Duncan).

Legal inhibitions being ever present, petitioner has kept the large Ferguson tractor and implements shelved until such time as it can bring it out as a Massey-Harris product. The following is from Stipulated Exhibit 297A-B, which is a letter dated October 14, 1953, written by Duncan to Bloom:

> "All this, of course as you will recognize, is working up to saying that we must, as soon as possible, be in a position to make up our mind as to when we could safely launch the big tractor in the United States."

About the middle of 1955 the officials of petitioner and its subsidiary abandoned all caution and appropriated the improved Ferguson 2-plow tractor and related implements, painted them the Massey-Harris red, extravagantly advertised the tractor as the Massey-Harris Miracle, stocked Massey-Harris branches with those tractors and implements, who in turn stocked plaintiffs cross-franchised dealers.

Anti-Trust Violations and Conspiracy

Having acquired a strangle hold upon the desirable distributors' dealers and completely appropriated the Ferguson System officials of the Parent and subsidiary recorded:

> "The general opinion was, as we have discussed so many times previously, that the small independent distributor has no place in the present distribution pattern and must be wiped out ultimately."
>
> * * *
>
> It was Mr. Hooker's view that in view of the probable ultimate and fairly early eliminating of the distributor system, there was no point in spending millions of dollars in trying to make two tractors that were distinctly different." (Stipulated Exhibit 392 —"NOTES ON DISCUSSION AT DETROIT, TUESDAY EVENING, MARCH 13, 1956, AT DEARBORN INN."

H. H. Bloom

M·H·F
Telefilm

MASSEY-HARRIS-FERGUSON LIMITED
Head Office: 915 KING ST. W., TORONTO, CANADA

DIRECTORS

H. G. Ferguson
Chairman of the Board

*H. H. Bloom
G. P. Campbell, Q.C.
H. J. Carmichael
*J. S. Duncan
President
C. L. Gundy

H. B. Housser
H. G. Kiernan
*G. C. Lobb
*M. W. McCutcheon, Q.C.
J. A. McDougald
W. H. Moore, Q.C.

*W. E. Phillips
Chairman Executive Committee
J. A. Simard
*E. P. Taylor
*J. S. D. Tory, Q.C.
*C. W. Webster
E. W. Young

* Member of Executive Committee

OFFICERS

J. S. Duncan	President	
H. H. Bloom	Vice-President	President, United States Division
C. N. Appleton	Vice-President and Secretary	
C. T. McIlveen	Vice-President	Director of Massey-Harris Engineering, Eastern Hemisphere Division
L. C. Burgess	Vice-President	Manufacturing and Engineering, General Manager, Canadian Division
W. Latimer	Vice-President	Planning and Procurement
W. W. Mackinney	Vice-President	General Manager, Eastern Hemisphere Export Division
R. B. Metcalfe	Vice-President	General Administration
M. F. Verity	Vice-President	
E. W. Young	Vice-President	Managing Director, Eastern Hemisphere Division

GENERAL COUNSEL
J. S. D. Tory, Q.C.
Clarkson, Gordon & Co., Toronto, Ont.

AUDITORS
National Trust Company Limited, Toronto, Ont. • The Toronto General Trusts Corporation, Montreal, Que.

TRANSFER AGENTS
The Toronto General Trusts Corporation, Toronto, Ont. • The Canadian Bank of Commerce, Montreal, Que.

REGISTRARS

H. H. Bloom

REPORT OF THE DIRECTORS TO THE SHAREHOLDERS

This annual report covers only the operations of Massey-Harris in North America. Subsidiaries outside North America are carried on the balance sheet as investments and only the dividends received from them are included in the statement of consolidated income. The Ferguson Companies are shown in the balance sheet as an investment and their operations are not included in this report.

The closing day of the year's operations witnessed a change in the name of the Company, which on October 31st became Massey-Harris-Ferguson Limited in accordance with the terms of the agreement for the amalgamation of the Harry Ferguson Companies with Massey Harris Company, Limited.

The uniting of these two world renowned organizations is an event outstanding in the history of the implement industry and certainly one of the greatest in the 106 years' lifetime of your Company. To the Company's line of machines which has given leadership in the field of mechanization of large farms is now added the Ferguson line of tractors and mounted implements employing the revolutionary Ferguson System, which over the past thirteen years has brought about a speedy mechanization of the farms of smaller acreages. The two lines are complementary rather than competitive and place the Company in an exceedingly strong competitive position in the entire field of farm mechanization.

The amalgamation having taken place as of October 31st, the operations of the Ferguson Companies are not included in the statement of consolidated income for the year, but the assets acquired are carried on the balance sheet as investments. The acquiring of the assets, valued at $16,385,000, was effected by the issuance of 1,805,055 shares of the capital stock of Massey-Harris-Ferguson Limited.

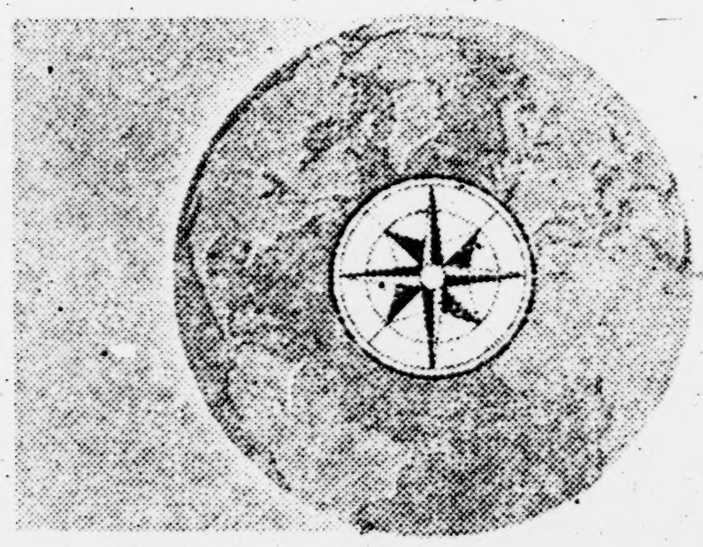
H. H. Bloom

The net worth of the Consolidated Ferguson Companies was made up as follows:

Cash	$ 5,809,000
Other Current Assets	19,191,000
	$25,000,000
Less—Current Liabilities other than Funded Indebtedness falling due within one year	$10,299,000
	$14,701,000
Fixed Assets	3,437,000
	$18,138,000
Less—Funded Indebtedness	1,753,000
Net Worth	$16,385,000

In addition to the foregoing there are the invaluable assets acquired against which no dollar value was placed, such as engineering skills, the hundreds of valuable patents, licences and inventions; a forthcoming additional line of larger tractors and farm equipment; the highly trained personnel of the Ferguson world-wide sales organizations, and perhaps most of all, the continuing services of Mr. Harry G. Ferguson himself, whose remarkable achievements in engineering have made and will continue to make a profound impact on world agriculture.

MASSEY-HARRIS
WORLD-WIDE SALES



	REGULAR BUSINESS	DEFENCE PRODUCTION	TOTAL
1911	$ 21,046,603		$ 21,046,603
1912	23,516,972*	$ 750,050	24,267,022
1913	29,995,919*	4,617,966	34,613,885
1914	29,936,074*	28,306,438	58,242,512
1915	24,898,453*	67,368,172	92,266,625
1916	40,578,965*	50,393,699	90,972,664
1917	48,098,582*	67,665,028	115,763,610
1918	66,734,197	5,659,222	72,393,419
1919	87,480,937	1,521,367	89,002,304
1920	154,522,379	—	154,522,379
1921	186,664,773	—	186,664,773
1922	196,025,391	—	196,025,391
1923	251,876,956	—	251,876,956
1924	248,923,796	44,099,251	293,023,047
1925	204,198,420	44,943,729	249,142,149
including Ferguson	323,594,820	44,943,729	368,538,549

*Exclusive of sales of Continental European subsidiaries not under Company control during this period.

H. H. Bloom

MASSEY-HARRIS-

CONSOLIDATED

OCTOBER 31, 1953

ASSETS

	October 31, 1953	October 31, 1952
CURRENT:		
Cash	$ 10,972,741	$ 7,426,707
Government securities—at cost (which approximates market)	3,969,290	
Bills and accounts receivable (less provision for possible losses, 1953—$4,255,331; 1952—$4,442,658)—		
Trade, etc.	25,701,695	24,306,397
United States and Canadian Governments (re defence contracts)	2,329,802	6,441,454
Subsidiary companies (including balances maturing beyond 12 months, 1953—$155,622; 1952—$1,679,263)	4,318,222	7,680,966
Inventories—as determined and certified by the management and valued at the lower of cost or market	81,231,918	83,286,370
Insurance deposits and prepaid expenses	1,654,210	993,062
	$129,627,818	$130,140,956
INVESTMENTS:		
Shares of newly acquired subsidiary companies (the "Ferguson" group), together with cash and certain other assets in the United Kingdom acquired under the agreement with Mr. Harry G. Ferguson (Note 2)	$ 16,385,000	
Shares in and advances to other subsidiary companies outside North America and investment in New Zealand branch (not consolidated) at values which in the aggregate are less than cost (Note 3)	$ 6,984,723	$ 6,058,226
Shares in other companies—at cost less amounts written off	$ 1,318,350	$ 1,318,350
FIXED:		
Land, buildings and equipment, at cost	$ 50,654,840	$ 48,422,313
Less accumulated depreciation	25,753,939	23,382,136
	$ 24,900,901	$ 25,040,177
PATENTS	$ 1	$ 1
	$179,216,796	$152,557,710

On behalf of the Board,

J. S. DUNCAN, Director

E. P. TAYLOR, Director

H. H. Bloom

FERGUSON LIMITED

BALANCE SHEET

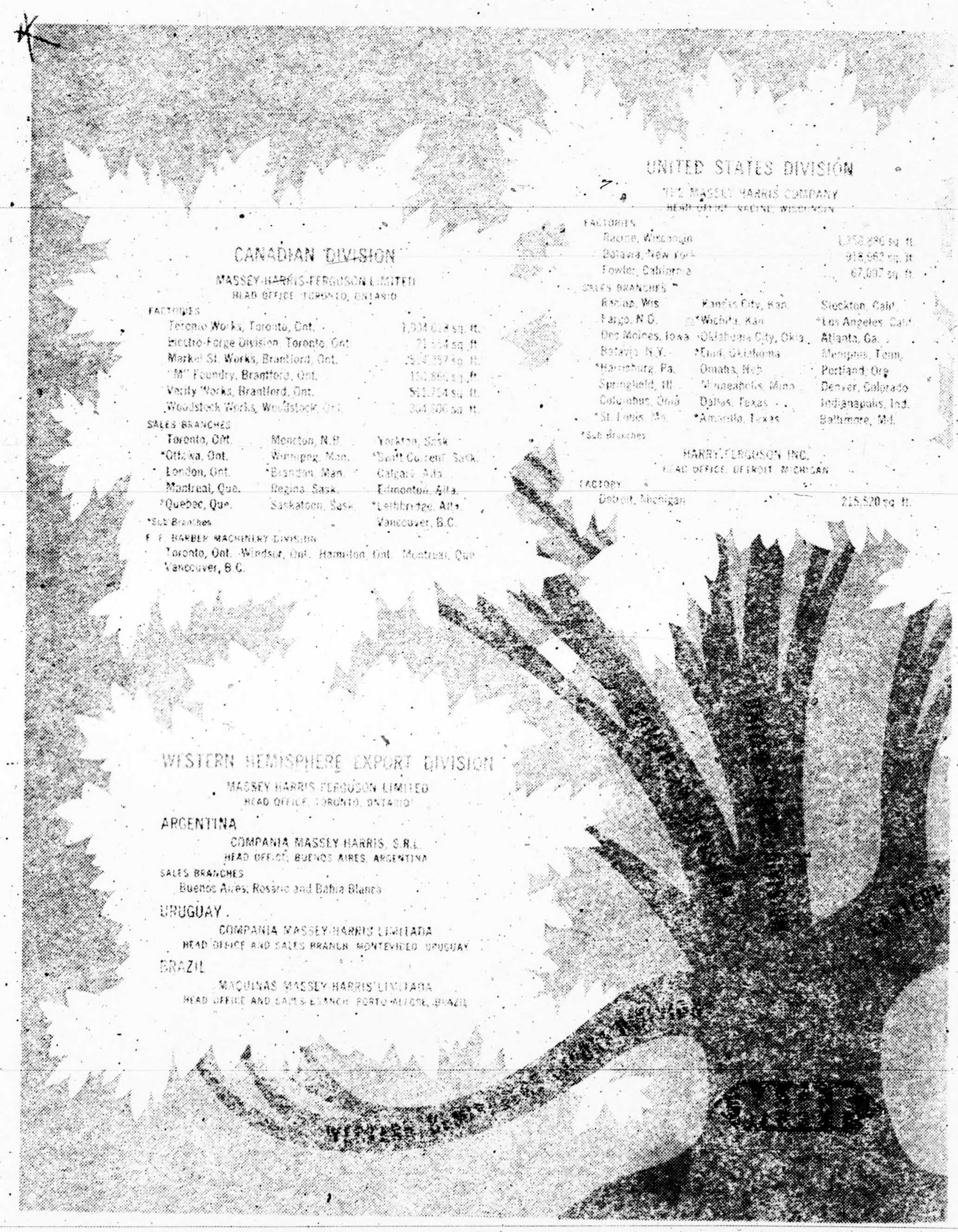
AND OCTOBER 31, 1952

LIABILITIES AND SHAREHOLDERS' EQUITY

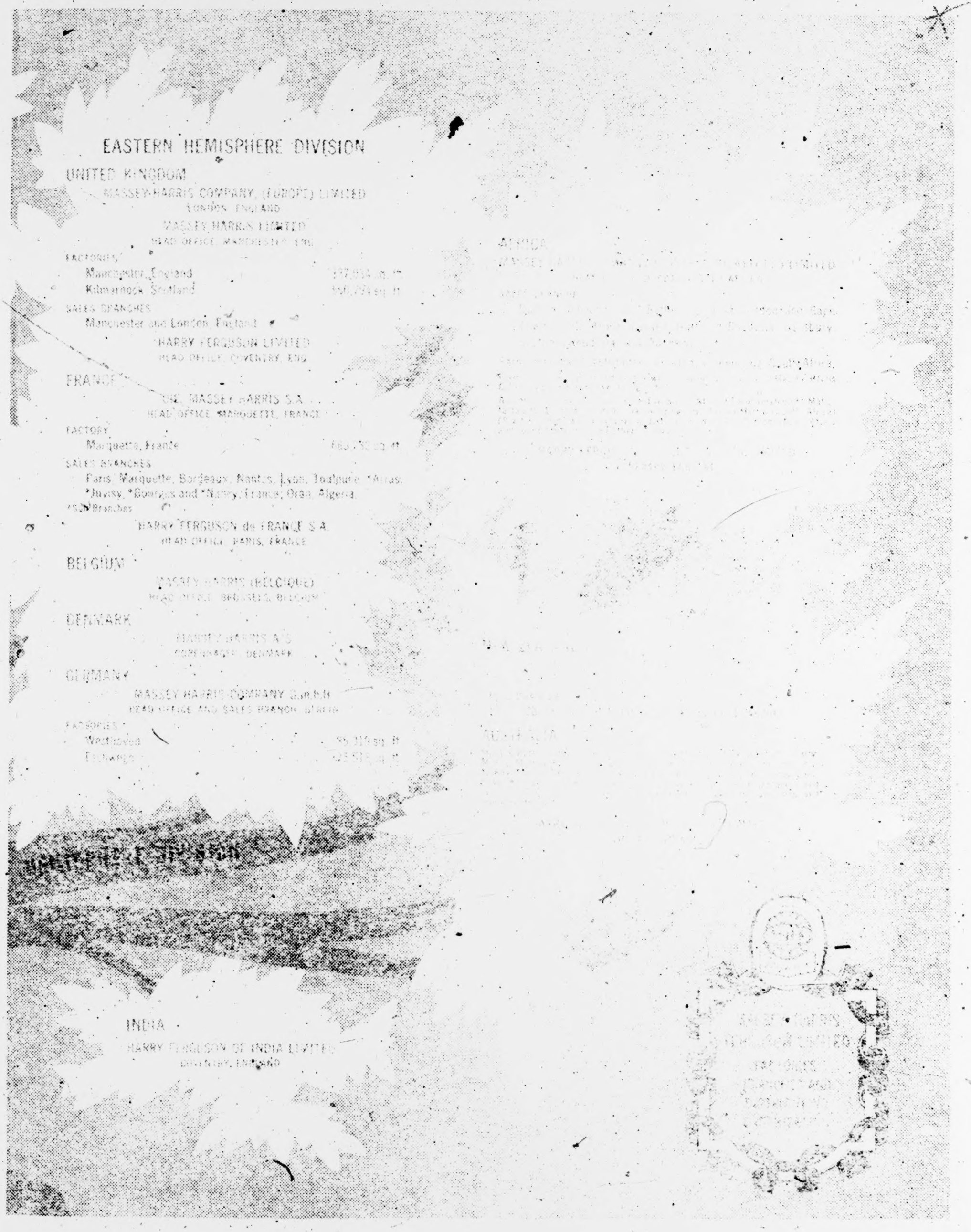
	July 31, 1953	October 31, 1952
CURRENT:		
Accounts payable and accrued charges	$ 10,264,987	$ 14,426,381
Income, sales and other taxes payable	6,887,039	9,503,647
Dividend payable December 15	425,867	1,151,303
Advance payments from customers	173,235	768,445
Due to subsidiary companies	2,079,685	
Funded debt instalments maturing within one year	1,850,000	1,650,000
	$ 22,759,713	$ 27,543,379
DEFERRED INCOME:		
Deferred income on sales to subsidiaries and dealers	$ 2,113,382	$ 2,102,258
RESERVES:		
For inventories	$ 15,683,101	$ 15,583,421
For contingencies	3,507,086	3,507,089
For pensions	3,398,471	3,259,218
	$ 23,581,658	$ 23,349,791
FUNDED DEBT:		
Massey-Harris-Ferguson Limited (Canada)—payable in Canadian dollars—		
First mortgage bonds (authorized less redeemed $17,303,000)—		
Serial 3½% bonds Series "A", maturing annually June 1, 1954-56	$ 1,650,000	$ 1,300,000
Sinking fund 3½% bonds Series "A", maturing June 1, 1965	8,250,000	8,250,000
Serial and sinking fund debentures—		
3½% Serial debentures maturing annually September 1, 1954-58	3,600,000	3,600,000
3½% Sinking fund debentures maturing September 1, 1979	10,000,000	10,000,000
5% Fifteen-year sinking fund debentures maturing July 1, 1962	9,500,000	10,000,000
The Massey-Harris Company (U.S.A.)—payable in U.S. dollars—		
3¼-5% promissory note maturing November 1, 1963 ($400,000 to be prepaid annually November 1, 1954-62)	8,000,000	8,400,000
4¼-5% promissory note maturing April 1, 1972 ($200,000 to be prepaid annually April 1, 1954-71)	4,800,000	5,000,000
4% promissory note maturing March 1, 1973 ($200,000 to be prepaid annually March 1, 1954-72)	5,000,000	
	$ 50,800,000	$ 46,850,000
Less principal instalments maturing within one year, included under current liabilities	1,850,000	1,650,000
	$ 47,950,000	$ 45,200,000
CAPITAL AND UNAPPROPRIATED EARNINGS:		
Capital—		
Authorized—12,500,000 common shares without nominal or par value		
Issued—1953—9,500,855 shares; 1952—7,695,800 shares (Note 2)	$ 31,915,909	$ 15,161,989
Capital surplus	1,785,973	1,785,973
Unappropriated earnings retained for use in the business	49,149,771	46,714,320
	$ 82,782,733	$ 63,962,282
	$179,216,796	$162,557,710

(See accompanying notes to financial statements)

H. H. Bloom


CANADIAN DIVISION
MASSEY-HARRIS-FERGUSON LIMITED
HEAD OFFICE, TORONTO, ONTARIO
FACTORIES
Toronto Works, Toronto, Ont. 1,034,624 sq. ft.
Electro-Forge Division, Toronto, Ont. 21,654 sq. ft.
Market St. Works, Brantford, Ont. 525,257 sq. ft.
"M" Foundry, Brantford, Ont. 150,866 sq. ft.
Verity Works, Brantford, Ont. 561,754 sq. ft.
Woodstock Works, Woodstock, Ont. 241,000 sq. ft.
SALES BRANCHES
Toronto, Ont. Moncton, N.B. Yorkton, Sask.
*Ottawa, Ont. Winnipeg, Man. *Swift Current, Sask.
London, Ont. *Brandon, Man. Calgary, Alta.
Montreal, Que. Regina, Sask. Edmonton, Alta.
*Quebec, Que. Saskatoon, Sask. *Lethbridge, Alta.
Vancouver, B.C.
*Sub Branches
F. E. BARBER MACHINERY DIVISION
Toronto, Ont. Windsor, Ont. Hamilton, Ont. Montreal, Que.
Vancouver, B.C.
UNITED STATES DIVISION
THE MASSEY HARRIS COMPANY
HEAD OFFICE, RACINE, WISCONSIN
FACTORIES
Racine, Wisconsin 1,058,896 sq. ft.
Batavia, New York 918,962 sq. ft.
Fowler, California 67,887 sq. ft.
SALES BRANCHES
Kansas, Wis. Kansas City, Kan. Stockton, Calif.
Fargo, N.D. *Wichita, Kan. *Los Angeles, Calif.
Des Moines, Iowa *Oklahoma City, Okla. Atlanta, Ga.
Batavia, N.Y. *Enid, Oklahoma Memphis, Tenn.
*Harrisburg, Pa. Omaha, Neb. Portland, Ore.
Springfield, Ill. Minneapolis, Minn. Denver, Colorado
Columbus, Ohio Dallas, Texas Indianapolis, Ind.
*St. Louis, Mo. *Amarillo, Texas Baltimore, Md.
*Sub Branches
HARRY FERGUSON INC.
HEAD OFFICE, DETROIT, MICHIGAN
FACTORY
Detroit, Michigan 215,520 sq. ft.
WESTERN HEMISPHERE EXPORT DIVISION
MASSEY HARRIS FERGUSON LIMITED
HEAD OFFICE, TORONTO, ONTARIO
ARGENTINA
COMPANIA MASSEY HARRIS, S.R.L.
HEAD OFFICE, BUENOS AIRES, ARGENTINA
SALES BRANCHES
Buenos Aires, Rosario and Bahia Blanca
URUGUAY
COMPANIA MASSEY-HARRIS LIMITADA
HEAD OFFICE AND SALES BRANCH, MONTEVIDEO, URUGUAY
BRAZIL
MAQUINAS MASSEY-HARRIS LIMITADA
HEAD OFFICE AND SALES BRANCH, PORTO ALEGRE, BRAZIL

H. H. Bloom


EASTERN HEMISPHERE DIVISION
UNITED KINGDOM
MASSEY-HARRIS COMPANY, (EUROPE) LIMITED
LONDON, ENGLAND
MASSEY HARRIS LIMITED
HEAD OFFICE, MANCHESTER, ENG.
FACTORIES
Manchester, England
Kilmarnock, Scotland
SALES BRANCHES
Manchester and London, England
HARRY FERGUSON LIMITED
HEAD OFFICE, COVENTRY, ENG.
FRANCE
CIE. MASSEY HARRIS S.A.
HEAD OFFICE, MARQUETTE, FRANCE
FACTORY
Marquette, France
SALES BRANCHES
Paris, Marquette, Bordeaux, Nantes, Lyon, Toulouse, *Arras,
*Bourges, *Bourgoin and *Nancy, France; Oran, Algeria
*Sub Branches
HARRY FERGUSON de FRANCE S.A.
HEAD OFFICE, PARIS, FRANCE
BELGIUM
MASSEY HARRIS (BELGIQUE)
HEAD OFFICE, BRUSSELS, BELGIUM
DENMARK
MASSEY HARRIS A/S
COPENHAGEN, DENMARK
GERMANY
MASSEY HARRIS COMPANY G.m.b.H.
HEAD OFFICE AND SALES BRANCH, BERLIN
FACTORIES
Westhoven
Essen
INDIA
HARRY FERGUSON OF INDIA LIMITED
COVENTRY, ENGLAND

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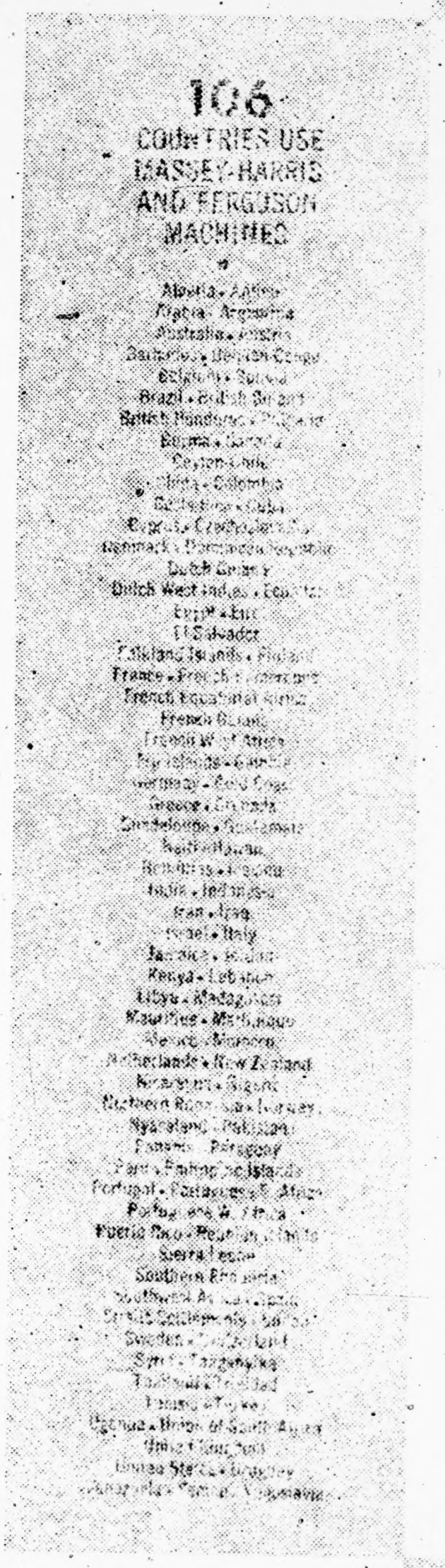
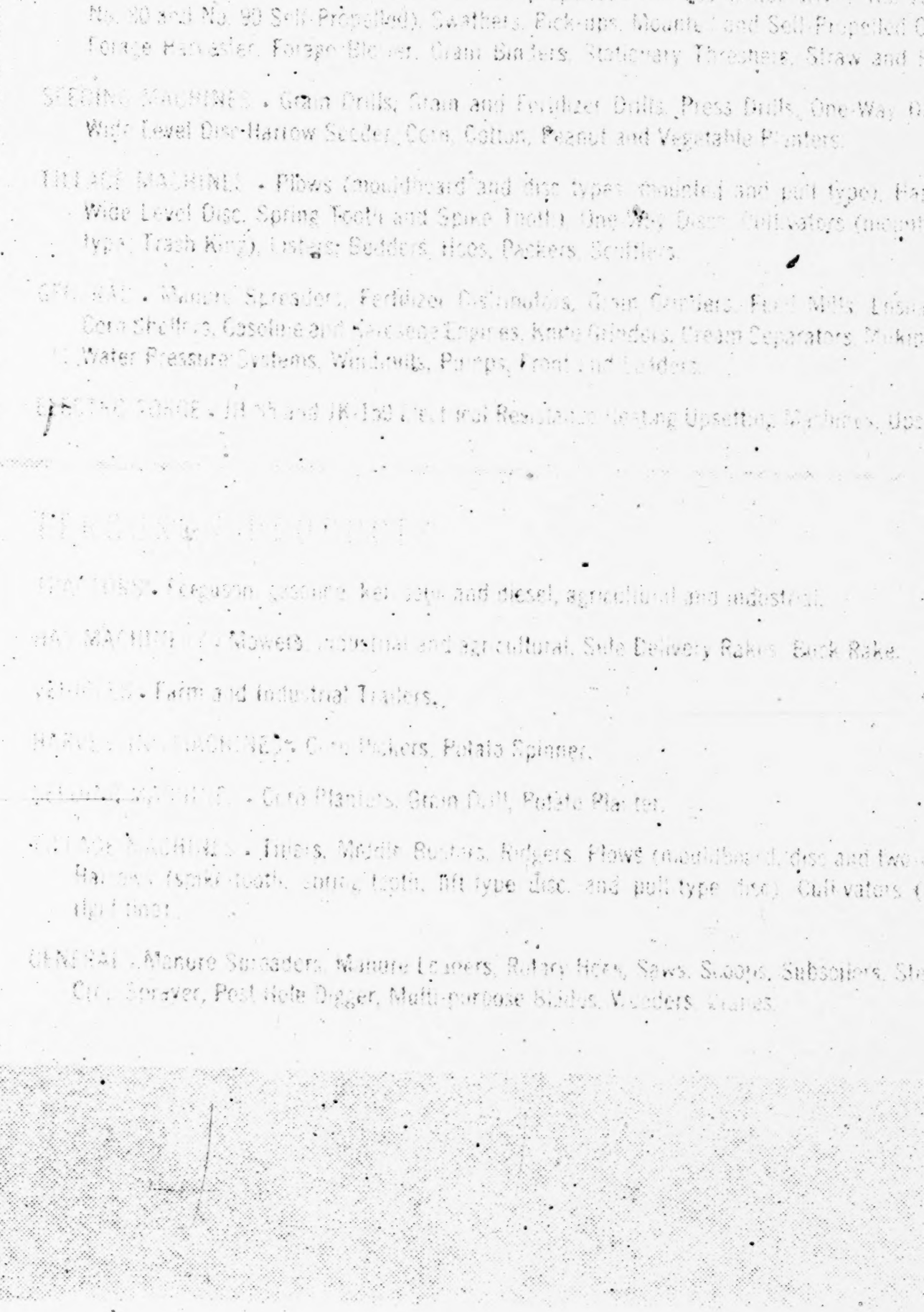
H. H. Bloom





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H. H. Bloom

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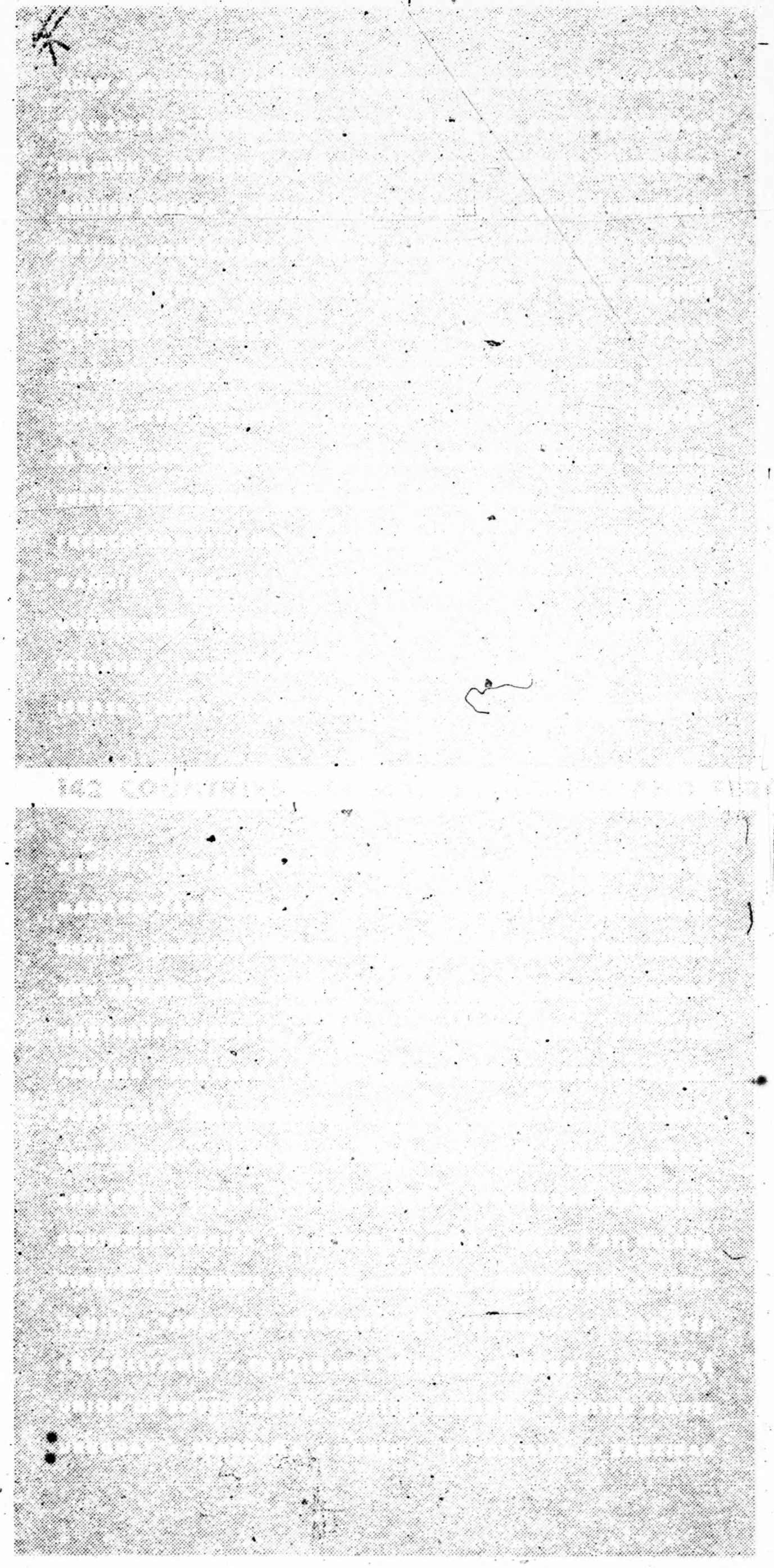
MASSEY-HARRIS-FERGUSON LIMITED

ANNUAL REPORT - 1954

MASSEY-HARRIS-FERGUSON LIMITED

Ed. H. Bloom

H. H. Bloom



H. H. Bloom

Head Office, 915 King St. W., Toronto, Canada

DIRECTORS

*J. S. Duncan, Chairman of the Board and President *W. E. Phillips, Chairman Executive Committee
*H. H. Bloom H. Borden, Q.C. G. P. Campbell, Q.C. H. J. Carmichael C. L. Gundy
H. B. Housser H. G. Klemm *M. W. McCutcheon, Q.C. *J. A. McDougald W. H. Moore, Q.C.
J. A. Simard *E. P. Taylor *C. W. Wetmore E. W. Young
*Members of Executive Committee

OFFICERS

J. S. Duncan, Chairman of the Board and President
H. H. Bloom, First Vice-President, President United States Division
C. N. Appleton, Vice-President and Secretary
G. T. M. Bevan, Vice-President, Director of Engineering, Eastern Hemisphere
E. G. Burgess, Vice-President, Manufacturing
H. G. Klemm, Vice-President, Director of Engineering, Western Hemisphere
W. Lattman, Vice-President, Planning and Procurement
W. W. Mawhinney, Vice-President, General Manager, Eastern Hemisphere Export Division
R. H. Metcalfe, Vice-President, General Administration
L. T. Ritchie, Vice-President, General Manager, Canadian Division
A. A. Thornbrough, Vice-President
M. F. Verity, Vice-President
E. W. Young, Vice-President, Managing Director, Eastern Hemisphere Division

National Trust Company, Limited, Toronto, Ont. and Vancouver, B.C., Canada
The Toronto General Trusts Corporation, Montreal, Que., Canada
The Canadian Bank of Commerce, Halifax, N.S., Canada
The Canadian Bank of Commerce Trust Company, New York, N.Y., U.S.A.
The British Empire Trust Company, Limited, London, England

The Toronto General Trusts Corporation, Toronto, Ont., Canada
National Trust Company, Limited, Vancouver, B.C., Canada
The Canadian Bank of Commerce, Montreal, Que. and Halifax, N.S., Canada
The Canadian Bank of Commerce Trust Company, New York, N.Y., U.S.A.
The British Empire Trust Company, Limited, London, England

Clarkson, Gordon & Co., Toronto, Ont.

Head Office, Racine, Wisconsin, U.S.A.

J. S. Duncan, Chairman of the Board H. H. Bloom, President
C. P. Milne, Executive Vice-President
E. A. Adams, Vice-President, Product and Field Research J. H. Carrick, Vice-President and Treasurer
H. G. Klemm, Vice-President and Chief Engineer K. H. Krause, Vice-President, Manufacturing
L. M. Sweeney, Vice-President, Sales G. H. Thomas, Vice-President, Administration
L. W. Petersen, Secretary

H. H. Bloom

MASSEY-HARRIS
CONSOLIDATED
(Canadian, United States

October 31, 1954, (with com

ASSETS

	October 31, 1954	October 31, 1953
CURRENT:		
Cash	$ 15,165,796	$ 18,055,145
Government securities—at cost		3,999,200
Notes and accounts receivable (less provision for possible losses, 1954—$1,472,592; 1953—$1,423,102)—		
Trade, etc. (including balances maturing beyond twelve months, 1954—$3,283,389; 1953—$177,394)	53,953,289	31,271,583
Canadian Government—re defence contracts (1953—Canadian and United States Governments)	407,693	2,329,802
Subsidiary companies	3,283,266	5,540,453
Inventories—as determined and certified by the management and valued at the lower of cost or market	87,133,696	98,902,184
Insurance deposits, prepaid expenses, etc.	1,603,126	1,725,214
	$161,347,166	$161,823,381
INVESTMENTS:		
Shares in and advances to subsidiary companies outside the United States and the United Kingdom and investment in New Zealand branch (not consolidated) at values which in the aggregate are less than cost (Note 3)	$ 5,562,577	$ 5,629,466
Shares in other companies—at cost less amounts written off	$ 1,318,350	$ 1,318,350
FIXED:		
Land, buildings and equipment, at cost	$ 61,523,335	$ 58,049,198
Less accumulated depreciation	30,809,707	28,348,797
	$ 30,713,628	$ 29,700,401
PATENTS	$ 1	$ 1

On behalf of the Board,

J. S. DUNCAN, Director

E. P. TAYLOR, Director

$198,941,822 $198,471,199

H. H. Bloom

FERGUSON LIMITED

BALANCE SHEET

and United Kingdom companies)

parative figures at October 31, 1953)

LIABILITIES AND SHAREHOLDERS' EQUITY

	October 31, 1954	October 31, 1953
CURRENT:		
Accounts payable and accrued charges	$ 16,635,750	$ 18,370,072
United States Government (re defence contracts)	1,533,638	
Income, sales and other taxes payable including certain United Kingdom income taxes not due until January 1, 1955 (less United Kingdom tax reserve certificates 1954—$1,375,000; 1953—$1,325,000)	10,600,813	11,670,026
Dividend payable December 15	1,425,072	1,425,067
Advance payments from customers	1,170,059	203,235
Funded debt instalments maturing within one year	1,886,731	3,240,434
	$ 36,302,098	$ 34,911,834
DEFERRED:		
Deferred income on sales to subsidiaries and dealers	$ 2,092,971	$ 2,402,077
Unearned finance charges on customers' notes	615,179	143,729
Provision for future pension payments	3,501,552	3,390,471
	$ 6,209,702	$ 5,936,277
RESERVES:		
For inventories	$ 16,683,491	$ 16,683,491
For contingencies	5,569,586	5,569,586
	$ 22,253,077	$ 22,253,077
FUNDED DEBT:		
Bonds, debentures and promissory notes of Canadian, United States and United Kingdom companies (Note 4)	$ 49,106,731	$ 53,145,434
Less principal instalments maturing within one year, included under current liabilities	1,886,731	3,240,434
	$ 47,220,000	$ 49,905,000
CAPITAL AND UNAPPROPRIATED EARNINGS:		
Capital—		
Authorized—12,500,000 common shares without nominal or par value		
Issued—9,500,855 shares	$ 31,846,989	$ 31,846,989
Capital surplus	1,785,973	1,785,973
Unappropriated earnings retained for use in the business (Note 5)	53,323,983	51,823,449
	$ 86,956,945	$ 85,462,411
(See accompanying notes to financial statements)	$198,941,822	$198,471,599

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H. H. Bloom

CANADIAN DIVISION

MASSEY-HARRIS-FERGUSON LIMITED • HEAD OFFICE: TORONTO, ONTARIO

FACTORIES

Toronto Works, Toronto, Ont.	1,904,028 sq. ft.	"M" Foundry, Brantford, Ont.	150,866 sq. ft.
Market St. Works, Brantford, Ont.	554,257 sq. ft.	Verity Works, Brantford, Ont.	511,754 sq. ft.
		Woodstock Works, Woodstock, Ont.	304,800 sq. ft.

SALES BRANCHES

Toronto, Ont. London, Ont. *Ottawa, Ont. Montreal, Que. *Quebec, Que. Moncton, N.B.
Winnipeg, Man. *Brandon, Man. Regina, Sask. Saskatoon, Sask. Yorkton, Sask.
*Swift Current, Sask. Calgary, Alta. Edmonton, Alta. *Lethbridge, Alta. Vancouver, B.C.
*SUB BRANCHES

F. F. BARBER MACHINERY DIVISION

Toronto, Ont. • Windsor, Ont. • Hamilton, Ont. • Montreal, Que. • Vancouver, B.C.

UNITED STATES DIVISION

MASSEY-HARRIS-FERGUSON INC. • HEAD OFFICE: RACINE, WISCONSIN

FACTORIES

Racine, Wisconsin	1,437,589 sq. ft.	Detroit, Michigan	215,520 sq. ft.
Batavia, New York	918,962 sq. ft.	Fowler, California	57,007 sq. ft.

SALES BRANCHES

Racine, Wis. Omaha, Neb. Stockton, Calif. Fargo, N.D. *Wichita, Kan. Baltimore, Md. Atlanta, Ga.
*Los Angeles, Calif. Des Moines, Iowa Oklahoma City, Okla. *Amarillo, Texas Indianapolis, Ind.
Batavia, N.Y. Memphis, Tenn. Kansas City, Kan. Portland, Ore. Springfield, Ill.
Minneapolis, Minn. Denver, Colorado Columbus, Ohio Dallas, Texas Pocatello, Idaho
*Spokane, Washington. *Lansing, Mich. *Billings, Montana.
*SUB BRANCHES

WESTERN HEMISPHERE EXPORT DIVISION

MASSEY-HARRIS-FERGUSON LIMITED • HEAD OFFICE: TORONTO, ONTARIO

ARGENTINA

COMPANIA MASSEY-HARRIS, S.R.L. • HEAD OFFICE, BUENOS AIRES, ARGENTINA
SALES BRANCHES: Buenos Aires • Rosario • Bahia Blanca.

URUGUAY

COMPANIA MASSEY-HARRIS LIMITADA • HEAD OFFICE AND SALES BRANCH, MONTEVIDEO, URUGUAY

BRAZIL

MAQUINAS MASSEY-HARRIS LIMITADA • HEAD OFFICE AND SALES BRANCH, PORTO ALEGRE, BRAZIL

H. H. Bloom

EASTERN HEMISPHERE DIVISION

UNITED KINGDOM

MASSEY-HARRIS-FERGUSON (EXPORT) LIMITED • LONDON
MASSEY-HARRIS-FERGUSON (MANUFACTURING) LIMITED • MANCHESTER
MASSEY-HARRIS-FERGUSON (SALES) LIMITED • COVENTRY
MASSEY-HARRIS-FERGUSON (ENGINEERING) LIMITED • COVENTRY

FACTORIES: Manchester, England 337,034 sq. ft. Kilmarnock, Scotland 689,680 sq. ft.
SALES BRANCHES: Manchester • London

FRANCE

CIE. MASSEY-HARRIS-FERGUSON S.A. • MARQUETTE, FRANCE
FACTORY: Marquette, France 670,247 sq. ft.
SALES BRANCHES: Paris Marquette Bordeaux Nantes Lyon Toulouse *Arras *Juvisy Bourges and *Nancy, France Oran, Algeria.
*SUB BRANCHES

DENMARK

MASSEY-HARRIS-FERGUSON EXPORT A/S. • COPENHAGEN

GERMANY

MASSEY-HARRIS-FERGUSON GMBH • WESTHOVEN
FACTORIES: Westhoven 85,319 sq. ft. Eschwege 75,518 sq. ft.

AFRICA

MASSEY-HARRIS COMPANY (SOUTH AFRICA) (PTY.) LIMITED • DURBAN, S.A.
SALES BRANCHES: Durban • Johannesburg • Bethlehem • East London and Cape Town, South Africa • Lusaka, Northern Rhodesia • Salisbury, Southern Rhodesia • Nakuru, Kenya: Farm Implement Distributors, Limited, Vereeniging, South Africa.

Farm Implement Distributors is a wholly owned subsidiary of Massey-Harris Company (South Africa) (Pty.) Limited.
A controlling stock interest is held in South African Farm Implement Manufacturers, Limited, "Safim," Vereeniging, by Massey-Harris (South Africa) (Pty.) Limited, which acts as a distributor of "Safim" products in Africa and sole distributor to all other countries.

HARRY FERGUSON OF SOUTH AFRICA LIMITED • LONDON, ENGLAND

NEW ZEALAND

MASSEY-HARRIS-FERGUSON LIMITED • CHRISTCHURCH
SALES BRANCHES: Christchurch • Palmerston • Auckland and Dunedin.

AUSTRALIA

Massey-Harris-Ferguson Limited, has a substantial stock interest in H. V. McKay Massey Harris Proprietary, Limited, Sunshine, Melbourne. This Company manufactures and markets an extensive line of farm implements and acts as distributor in Australia of Massey-Harris tractors, combines and implements.

HARRY FERGUSON OF AUSTRALIA LIMITED • LONDON, ENGLAND

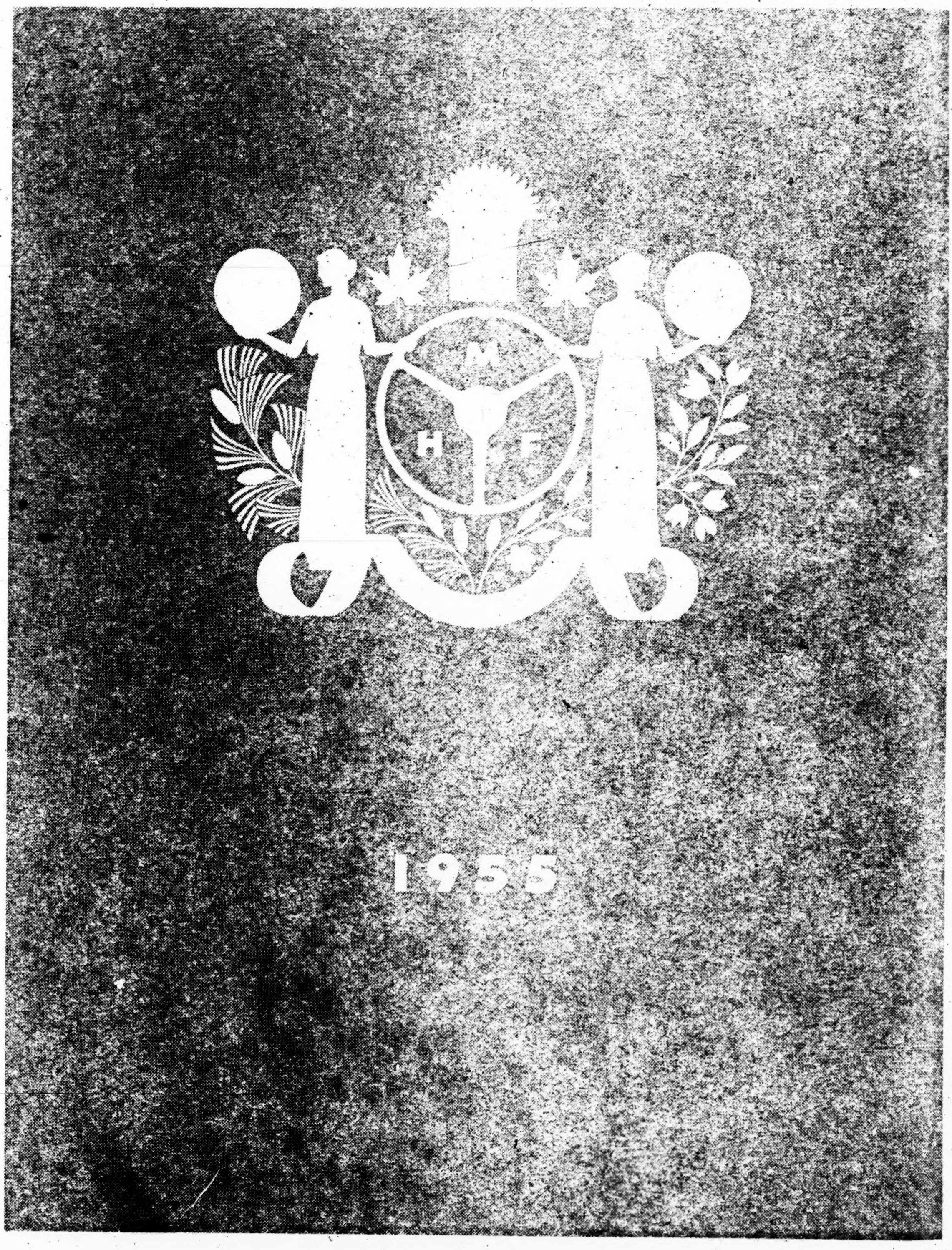
INDIA

MASSEY-HARRIS-FERGUSON (INDIA) LIMITED • LONDON, ENGLAND

MASSEY-HARRIS-FERGUSON LIMITED

FACTORIES, BRANCHES AND DISTRIBUTING ORGANIZATION

H. H. Bloom



H. H. Bloom

H. H. Bloom

MASSEY-HARRIS

CONSOLIDATED

(Canadian, United States

OCTOBER 31, 1955 (with com

ASSETS

	October 31, 1955	October 31, 1954
CURRENT:		
Cash	$ 13,349,530	$ 15,165,796
Government securities—at cost (approximate market)	1,756,238	
Notes and accounts receivable (less provision for possible losses: 1955—$4,526,082; 1954—$4,472,692)—		
Trade, etc. (including balances maturing beyond twelve months: 1955—$1,990,876; 1954—$2,283,359)	59,358,802	53,853,289
Canadian and United States Governments—re defence contracts (1954—Canadian Government only)	1,509,253	407,693
Subsidiary companies	9,054,492	3,283,266
Inventories—as determined and certified by the management and valued at the lower of cost or market	96,517,237	87,133,696
Insurance deposits, prepaid expenses, etc.	1,446,551	1,503,426
	$182,392,103	$161,347,166
INVESTMENTS:		
Shares in and advances to subsidiary companies outside the United States and the United Kingdom and investment in New Zealand branch (not consolidated) at values which in the aggregate are less than cost (Note 3)	$ 8,092,481	$ 5,562,677
Shares in other companies—		
H. V. McKay Massey Harris Proprietary Limited (Australia)—at cost less amounts written off (Note 3)		1,318,350
Other—at cost	733,166	
	$ 8,825,647	$ 6,881,027
FIXED:		
Land, buildings and equipment, at cost (Note 4)	$ 69,299,501	$ 61,523,335
Less accumulated depreciation and amortization	35,329,863	30,809,707
	$ 33,969,638	$ 30,713,628
PATENTS	$ 1	$ 1

On behalf of the Board:

J. S. DUNCAN, Director

E. P. TAYLOR, Director

$225,787,389 $198,941,822

H. H. Bloom

FERGUSON LIMITED

BALANCE SHEET

nd United Kingdom companies)

arative figures at October 31, 1954)

LIABILITIES AND SHAREHOLDERS' EQUITY

	October 31, 1955	October 31, 1954
CURRENT:		
Accounts payable and accrued charges	$ 19,217,894	$ 16,685,750
United States Government — re defence contracts		4,533,638
Income, sales and other taxes payable including certain United Kingdom income taxes not due until January 1, 1957 (less, in both years, United Kingdom tax reserve certificates — $1,375,000)	14,402,752	10,600,848
Dividends payable	1,707,010	1,425,072
Advance payments from customers	2,061,126	1,170,059
Funded debt instalments maturing within one year	1,850,000	1,886,731
Retirement fund for redemption of preferred shares	248,170	
	$ 39,486,952	$ 36,302,098
DEFERRED:		
Deferred income on sales to subsidiaries and dealers	$ 2,302,573	$ 2,092,971
Unearned finance charges on customers' notes	988,512	615,179
Provision for future pension payments	3,712,316	3,501,552
	$ 7,003,401	$ 6,209,702
RESERVES:		
For inventories (Note 1)	$ 16,858,491	$ 16,683,491
For contingencies	5,569,586	5,569,586
	$ 22,428,077	$ 22,253,077
FUNDED DEBT:		
Bonds, debentures and promissory notes of Canadian, United States and United Kingdom companies (Note 5)	$ 46,786,287	$ 49,106,731
Less principal instalments maturing within one year, included under current liabilities	1,850,000	1,886,731
	$ 44,936,287	$ 47,220,000
CAPITAL AND UNAPPROPRIATED EARNINGS:		
Preferred shares, par value $100 each—		
Authorized—500,000 shares issuable in series (of which 1,830 shares have been converted into common shares)		
Outstanding—248,170 4½% cumulative convertible preferred shares—redeemable at $104.50	$ 24,817,000	
Less retirement fund, included under current liabilities	248,170	
	$ 24,568,830	
Common shares without nominal or par value—		
Authorized—12,500,000 shares (Note 6)		
Outstanding—9,519,155 shares (1954—9,500,855 shares)	32,029,989	$ 31,846,989
Capital surplus (Note 1)	1,963,336	1,785,973
Unappropriated earnings retained for use in the business (Note 7)	53,370,517	53,323,983
	$111,932,672	$ 86,956,945
(See accompanying notes to financial statements)	$225,787,389	$198,941,822

H. H. Bloom

MASSEY-HARRIS-FERGUSON LIMITED

CANADIAN DIVISION

MASSEY HARRIS FERGUSON LIMITED
TORONTO ONTARIO

FACTORIES
Toronto Works, Toronto, Ont.
Market St. Works, Brantford, Ont.
"M" Foundry, Brantford, Ont.
Verity Works, Brantford, Ont.
Wood Stock Works, Woodstock, Ont.

SALES BRANCHES
Toronto, Ont.
London, Ont.
*Ottawa, Ont.
Montreal, Que.
*Quebec, Que.

*Sub Branches

M. F. SARGENT MACHINERY LIMITED
Toronto, Ont.
Vancouver, B.C.

SUNSHINE HARVESTER WORKS
MELBOURNE, AUSTRALIA

FACTORY
Wallace, Ont.

UNITED STATES DIVISION

MASSEY HARRIS FERGUSON INC.
RACINE, WISCONSIN

FACTORIES
Racine, Wisconsin
Batavia, New York
Detroit, Michigan
Kansas City, Missouri
Beatrice, Nebraska
Omaha, Nebraska
Minneapolis, Minnesota
Portland, Oregon
Stockton, California
Parkersburg, West Virginia

SALES BRANCHES
Baltimore, Md.
Albany, New York
Atlanta, Georgia
Boston, Mass.
Buffalo, New York
Chicago, Illinois
Cleveland, Ohio
Dallas, Texas
Des Moines, Iowa
Detroit, Michigan
Harrisburg, Pa.
Indianapolis, Indiana
Jackson, Miss.
Kansas City, Missouri
Los Angeles, California
Minneapolis, Minnesota
Omaha, Nebraska
Portland, Oregon
Richmond, Virginia
Salt Lake City, Utah
San Francisco, California
Seattle, Washington
Spokane, Washington
St. Louis, Missouri

WESTERN HEMISPHERE EXPORT DIVISION

MASSEY HARRIS FERGUSON LIMITED
TORONTO ONTARIO

SUBSIDIARIES

COMPANIA MASSEY HARRIS ARGENTINA
BUENOS AIRES ARGENTINA

COMPANIA MASSEY HARRIS DEL URUGUAY
MONTEVIDEO URUGUAY

AUSTRALIAN DIVISION

H. V. McKAY MASSEY HARRIS PTY. LTD.
SUNSHINE AUSTRALIA

H. V. McKAY MASSEY HARRIS PROPRIETARY LIMITED
SUNSHINE AUSTRALIA

FACTORY
Sunshine Works

SALES BRANCHES
Sunshine, Victoria, Camberwell, Victoria, North Melbourne, Victoria, Adelaide, South Australia, Perth, Western Australia

H. V. McKAY MASSEY HARRIS (QUEENSLAND) PROPRIETARY LIMITED
BRISBANE, AUSTRALIA

EASTERN HEMISPHERE DIVISION

MASSEY HARRIS FERGUSON LIMITED
BRANTFORD, ONTARIO

MASSEY-HARRIS FERGUSON (EXPORT) LIMITED
LONDON, ENGLAND

MASSEY HARRIS FERGUSON (GREAT BRITAIN) LIMITED
MANCHESTER, ENGLAND

MASSEY HARRIS FERGUSON (SALES) LIMITED
DARLASTON, ENGLAND

MASSEY HARRIS FERGUSON (FERGUSON) LIMITED
COVENTRY, ENGLAND

MASSEY HARRIS FERGUSON (NEW ZEALAND) LIMITED
CHRISTCHURCH, NEW ZEALAND

SALES BRANCHES
Christchurch, Palmerston North, Auckland, Wellington

MASSEY HARRIS FERGUSON (AUSTRALIA) LIMITED
SUNSHINE, AUSTRALIA

MASSEY HARRIS FERGUSON (IRELAND) LIMITED
RANELAGH, DUBLIN